UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/24/Add.5
9 February 2000

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

SLOVENIA

[10 August 1999]

GE.00-40651 (E)

CONTENTS

	Paragraphs	Page
List of abbreviations		3
State and population	1 - 17	4
Introduction	18 - 33	7
Reports on articles 1-15 of the Convention	34 - 380	10
Article 1	34 - 60	10
Article 2	61 - 202	16
Article 3	203 - 213	45
Article 4	214 - 222	48
Article 5	223 - 230	50
Articles 6-8	231 - 237	52
Article 9	238 - 244	53
Article 10	245 - 251	54
Article 11	252 - 278	55
Article 12	279 - 309	60
Article 13	310 - 353	66
Article 14	354 - 373	74
Article 15	374 - 380	78
List of references		100
List of appendices		101

List of abbreviations

Ur. l.	-	Official Gazette
RS	-	Republic of Slovenia
SRS	-	Socialist Republic of Slovenia (as a unit of the former Socialist Federal Republic of Yugoslavia)
SFRY	-	Socialist Federal Republic of Yugoslavia
MP	-	Ministry of Justice
MNZ	-	Ministry of the Interior
KZRS	-	Penal Code of the Republic of Slovenia

Other abbreviations are explained separately in the text of the report.

State and population

A. Basic information

1. Slovenia is a parliamentary democratic republic, a state governed by the rule of law and a social state, which proclaimed its independence and sovereignty pursuant to the Constitution on 25 June 1991, and gained international recognition.[1]

2. The Republic of Slovenia is one of the smaller countries in Europe - its area is 20,273 square km, and it has approximately 2 million inhabitants (1,986,989 on 31 December 1996). It belongs to Central Europe and the Mediterranean, and is situated at the strategically important junction between Western Europe and the Balkans. For this reason it has throughout history been a political, economic, cultural and traffic transit area. Slovenia is an economically medium-developed country; in 1998 the gross domestic product per capita amounted to USD 10,000.[2]

3. The population structure of the Republic of Slovenia is relatively homogenous, although the proportion of the non-Slovene population is gradually increasing.[3] The non-Slovene population can be divided into several groups: members of the autochthonous Italian and Hungarian national communities, living in a small yet compact area along the Italian and Hungarian borders respectively; members of the Romany community, which represents a special group of the population because of their specific way of life; small remainders of autochthonous minority groups (Jews, Germans); and the biggest group, consisting of populations from the former Yugoslav republics (Croats, Serbs, Muslims, Macedonians, Montenegrins), who inhabited Slovenia particularly after World War II. Most of them acquired Slovene citizenship following the gaining of independence by Slovenia.

4. Under the Constitution, all inhabitants of Slovenia are guaranteed the right to preserve their national identity, to foster their culture and to use their own language and script (article 61). Members of all the above communities are organized in associations, which are particularly engaged in cultural and information activities, and their programmes are financed from the state budget on the basis of a call for applications, published yearly by the Ministry of Culture.[4] Upon gaining independence, the Republic of Slovenia committed itself under the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia to guaranteeing the protection of human rights and fundamental freedoms to all persons in the territory of the Republic of Slovenia regardless of their affiliation, without any discrimination, in accordance with the Constitution of the RS and international agreements in force.[5]

5. Slovene minorities live in all four neighbouring countries - Austria, Croatia, Italy and Hungary, and vice versa - minorities from the neighbouring countries live in Slovenia. The official language of Slovenia is Slovene; in bilingual areas, i.e. Primorsko region, where the autochthonous Italian minority resides, the official languages are Slovene and Italian; and in the Prekmurje region, where the autochthonous Hungarian minority resides, the official languages are Slovene and Hungarian.

B. The administration of the State

6. The power is divided into legislative, executive and judicial powers.

7. The supreme authority is the National Assembly (Parliament) with 90 deputies from the 7 parties represented in the Parliament, and 1 deputy each from the autochthonous Hungarian and Italian minorities respectively. The National Council, with 40 Councillors, represents social, economic, trade and professional, and local interests.

8. The State is represented by the President of the Republic, who is at the same time the Commander-in-Chief of the Defence Forces of Slovenia. The power is thus exercised by the Parliament, Government, and the President of the Republic.

9. Pursuant to the Constitution, the judiciary is completely independent, separated from the executive and legislative powers, bound only by the Constitution and the law. The office of a judge is permanent. Judges are elected by the National Assembly upon the recommendation of the professional and independent Judicial Council. The majority of the members of the Judicial Council are elected by the judges amongst themselves, and some members are elected by the National Assembly on the nomination of the President of the Republic from amongst professors of law, practising lawyers and other established lawyers. Jurisdiction of the courts is determined by the law. Extraordinary courts must not be established in Slovenia, and military tribunals must not be established in peacetime either. Regular courts are courts of general competence and specialized courts.

10. The Constitutional Court is the supreme judicial body in the State. It is within the competence of the Constitutional Court to decide on the compliance of legislation with the Constitution and ratified treaties, on constitutional complaints concerning violations of human rights and fundamental freedoms by individual acts of national bodies, and on accusation against the highest representatives of the authority (the President of the Republic, the Prime Minister and the individual ministers), and on other matters.

C. Constitutional protection of human rights

11. The largest part of the Constitution of the Republic of Slovenia is devoted to the guarantees of human rights and fundamental freedoms. Therefore, the content of the European Convention on the Protection of Human Rights and Fundamental Freedoms is integrated into the Constitution. Within the framework of the succession to international agreements Slovenia has succeeded to, or ratified, most of the Conventions in this field.

12. It is permissible, in exceptional cases, to temporarily revoke or restrict the human rights and fundamental freedoms, guaranteed by the Constitution, but only in exceptional circumstances of war or a state of emergency. However they may only be revoked or restricted for the duration of the war or during a state of emergency, solely to the extent required by the same, and inasmuch as the revocation or restriction does not create inequality of treatment based on race, national origin, sex, language, religion, political or other beliefs, financial status, birth, education, social status or any other personal circumstance. At no time and under no condition is temporary restriction or revocation of the following fundamental constitutionally guaranteed

rights or stipulated obligations permissible: 1. inviolability of human life; 2. prohibition against torture; 3. protection of human personality and dignity; 4. presumption of innocence; 5. principle of legality in the criminal law; 6. legal guarantees in criminal proceedings; 7. freedom of conscience (article 16 of the Constitution).

13. Provisions regarding human rights and fundamental freedoms are contained in articles 14 to 65 of the Constitution. The first constitutionally guaranteed right of anyone is equality before the law (article 14). Everyone in Slovenia is guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status or any other personal circumstance. This applies both to citizens and to foreigners. All laws and bylaws or any other acts by national bodies not consistent with this constitutional provision may be disputed by an appeal to the Constitutional Court. In addition to the above-mentioned, concrete judicial protection is also guaranteed in the event of any violation of human rights and fundamental freedoms, including any form of discrimination.

14. Freedom of expression of thought, freedom of speech, and freedom to associate in public, together with freedom of the press and of other forms of public communication and expression are guaranteed (article 39 of the Constitution). The profession of the religious and other beliefs of any person in private and in public is free. No person is compelled to admit his/her religious or other beliefs (article 41 of the Constitution). State and religious groups are separate according to the Constitution. Religious groups enjoy equal rights and are guaranteed freedom of activity (article 7 of the Constitution). Mutual relations are regulated by Constitution, laws and agreements. Approximately 90 per cent of the citizens belong to a religious faith, the Roman Catholic religion being predominant, and Protestant, Orthodox, Muslim and Jewish religious minorities also exist, as well as several variants of basic religions or sects. The state is co-financing the activities and development of religious groups.

D. Manner of exercising and monitoring constitutional guarantees

15. In order to control the protection of human rights and fundamental freedoms a special institution of the Ombudsman has been established. The Constitution and a special law stipulate his competence and functioning. The Ombudsman monitors all relations in the field of human rights protection in the State between the citizens on the one hand and national bodies, local self-government bodies and statutory authorities on the other. The Constitution guarantees the right to eliminate the consequences of the violation of human rights and fundamental freedoms (article 15).

16. The constitutional principle of equality is also guaranteed in the legislation, precisely stipulating the manner of exercising individual human rights and fundamental freedoms in individual fields: political, economic, social, cultural and other domains. The important principle here is that laws and other regulations must be consistent with the Constitution and also with the generally applicable principles of international law and with international agreements binding upon the Republic of Slovenia (articles 8 and 153 of the Constitution - conformity of legal acts). The constitutional principle of equality before the law is consistent with the standards of international law stemming from the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms and other

sources of international law. Violation of the right of equality before the law (article 14 of the Constitution) is sanctioned in the Penal Code of the Republic of Slovenia as a special criminal offence of violating equality (article 60 of the Penal Code). International law standards have been systematically integrated into Slovene internal legislation. In case of doubt, the provisions of the ratified and promulgated international treaty prevail over the national law, since they take immediate effect and are directly applicable as a source of law (article 8 of the Constitution).

17. In order to raise public awareness of the existence of individual rights and fundamental freedoms, the Government - in cooperation with and supported by non-governmental organizations (NGOs) and the media - is drawing up suitable programmes. Their purpose is: to educate and inform the public about the international instruments and individual mechanisms designed to eliminate violations and their consequences.

Introduction

18. Pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, 1984), the Republic of Slovenia hereby submits the consolidated initial and second periodic report to the Committee against Torture.

19. With respect to the validity of legal acts in the Republic of Slovenia, the report describes the actual final state of affairs as of 1 March 1998.

20. The report specifies the numbers of the issues of the Official Gazette of the Republic of Slovenia in which individual acts have been published, whenever these acts are mentioned in the text for the first time. References include official gazettes in which individual acts were published, as well as official gazettes in which amendments, changes or additions have been made to these acts. For the sake of clarity, the official gazettes which incorporate changes with no bearing on the problems under discussion are not referenced (e.g. minor editorial changes in the text without any significant legal effects, the revaluation of amounts due to inflation, changes in the name of the Slovene currency, changes in titles of institutions, etc.).

21. The following entities have participated in the preparation of this report: the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Justice, the Ministry of Health, the Faculty of Law of the University of Ljubljana, the Institute of Criminology at the Faculty of Law of the University of Ljubljana, and a number of organizations and associations. Summaries of their reports are either included in the full text of the report or attached to this report as appendices.

22. Statistical data and data on practice are derived from official written reports compiled by the aforementioned ministries and annual reports drawn up by the Human Rights Ombudsman of the Republic of Slovenia and adopted by the National Assembly, as well as from yearbooks issued by the National Statistical Office. Where possible and sensible, these sources are appropriately referenced in the report.

23. Texts of Slovene legal theories are referred to only in places where they can serve as an argument for the theoretical protection of standards included in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, primarily

with respect to issues which the Slovene justice system and administration have not yet defined simply because they have not encountered concrete problems in practice. Quotations from legal theory sources include exclusively the most recent works by Slovene legal theoreticians, as well as works which enjoy the greatest amount of authority and are most influential in Slovenia. These are quoted in the report in an abridged form and, as a rule, without reference to pages; full references are included in the special chapter at the end of the report (see "References").

A.

24. Pursuant to articles 8 and 13 of the Constitution of the Republic of Slovenia (Ur. l. RS, No. I – 33/91), which has been in force since 23 December 1991, published international treaties ratified by the National Assembly are deemed to be direct positive law at the supra-legal level.[6]

25. Primary and secondary legislation in Slovenia which is not in compliance with the regulations included in published international treaties ratified by the National Assembly are therefore in contravention with the Constitution of the Republic of Slovenia.

26. As a result, individual acts issued by national bodies, local community bodies, or holders of public authorizations, which are based on primary and secondary legislation in the Republic of Slovenia but which are not in compliance with the regulations included in international treaties ratified by the National Assembly, are deemed to be unlawful.[7]

27. In addition, the aforementioned bodies are obliged to positively realize, and in suitable legal acts and measures consistently concretize, the provisions included in published international treaties ratified by the National Assembly. The provisions of these international treaties which may not be applied directly, for one reason or another, must be normatively concretized by the responsible national bodies to the extent of direct legal applicability. This applies in particular to the provisions of a substantive criminal law nature.

B.

28. The Republic of Slovenia adopted a special act (Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act – Ur. l. RS – International Treaties, No. 7/93) on 15 April 1993 (Order on the Proclamation of the Act - 23 April 1993), thereby ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, 1984; hereinafter referred to as: Convention against Torture). In accordance with regulations, the act was published on 14 May 1993 and incorporates the entire text of the Convention against Torture in English, as well as its translation into Slovene. It entered into force on 29 May 1993. Upon ratification the Republic of Slovenia also made the declaration under articles 21 and 22 of the Convention.

29. Since, in accordance with the provision of article 8 of the Constitution of the Republic of Slovenia, "acts and other regulations (...) must be in line with the generally-recognized principles of international law and with international treaties which bind Slovenia", since the same provision states that "international treaties published in Slovenia (...) shall have direct application", and since article 153/II of the Constitution of the Republic of Slovenia sets out that

acts must be "in accordance with valid international treaties ratified by the National Assembly (...)", the provisions of the relevant Convention are deemed to be a text at the supra-legal[8] level in Slovenia.

30. As the Convention against Torture and its ratification act in Slovenia do not prescribe sufficiently defined sanctions, the definition of torture given in article 1/I of the Convention against Torture, in accordance with the principle of legality specified in article 28/I of the Constitution of the Republic of Slovenia[9] (and article 1 of the Penal Code of the RS), cannot represent direct incrimination and therefore calls for special transformation into Slovene positive criminal law.

C.

31. The Constitution of the Republic of Slovenia declares that "within its own territory, Slovenia shall protect human rights and fundamental freedoms" (article 5) and that "each individual shall be guaranteed equal human rights and fundamental freedoms (...) irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, or whatever other personal circumstances" (article 14). It stresses that "the direct exercise of human rights and fundamental freedoms shall be guaranteed by the Constitution" (article 15/I) and, at the same time, that "(...) human rights and fundamental freedoms shall be guaranteed judicial protection" (article 15/IV).

32. Deriving from the above premises, the Constitution of the Republic of Slovenia, in addition to the explicit permission to temporarily revoke or restrict human rights only in exceptional circumstances of war or a state of emergency (in accordance with paragraph II, in connection with paragraph I of article 16), further declares that "human life (...) shall be inviolable" and that "there shall be no capital punishment in Slovenia" (both specified in article 17), that "no one may be subjected to torture, inhuman or humiliating punishment or treatment", that "it shall be forbidden to conduct any medical or scientific experiment on any person without his free consent" (both in article 18), that "respect for the humanity of the individual and for the dignity of the person shall be guaranteed in all criminal and other proceedings, upon the arrest or detention of any person, whenever any person is detained or arrested, and in the carrying-out of any penalty" (article 21/I), and that "the use of violence of any sort on any person whose liberty has been restricted in any way shall be forbidden, as shall the use of all forms of force in obtaining confessions and admissions" (article 21/II).

33. In this way the Republic of Slovenia guarantees the elementary compliance of its own positive constitutional legal apparatus with the Convention against Torture - in other words, the compliance of its supreme positive internal law with the relevant positive act of international law. All other more concrete efforts made by Slovenia towards achieving the compliance of its own positive law, legal practice and legal theory with the provisions of the Convention against Torture are demonstrated in the form of reports relevant to individual articles of the Convention against Torture.

Reports on articles 1-15 of the Convention

Article 1

1.

34. The central act of valid Slovene substantive criminal law, the Penal Code of the Republic of Slovenia (Ur. l. RS No. 63/94 of 13 October 1994 – hereinafter: KZRS), which entered into force on 1 January 1995, does not incorporate any special definition of torture (unlike article 1 of the Convention against Torture). In other words, the definition specified in the Convention was not literally incorporated (i.e. was not subjected to special literal transformation) into Slovene substantive criminal law. The offences described in the provision of article 1/1 of the Convention against Torture are covered by the KZRS in a number of different incriminations.

35. Acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, irrespective of the possible special purposes of the perpetrator (e.g. discriminatory extortion of information or a confession, punishment, intimidation or coercion) or his special or similar official capacity, are defined by criminal offences involving aggravated bodily harm (article 134/1 of the KZRS) and grievous bodily harm (article 135/I of the KZRS).

36. The definition of aggravated bodily harm in article 134/I of the KZRS reads as follows: "Whoever inflicts bodily harm on another person or damages his health to such an extent that this might place the life of the injured person in danger or cause the destruction or permanent serious impairment of an organ or part of his body, the temporary serious weakness of a vital part or organ of his body, the temporary loss of his ability to work, the permanent or serious temporary diminution of his ability to work, his temporary disfigurement, or serious temporary or less severe but permanent damage to the health of the injured person."

37. The definition of grievous bodily harm in article 135/I of the KZRS reads as follows: "Whoever inflicts bodily harm on another person or damages his health so severely that this results in a risk to the life of the injured person, the destruction or substantial permanent impairment of any vital part or organ of the body, permanent loss of his ability to work, his permanent disfigurement, or serious permanent damage to his health."

38. Although the titles of the quoted articles of the KZRS use the word "bodily" and although the two criminal offences are covered in the chapter entitled "Criminal Offences Against Life and Limb [!]" (chapter 15), the definitions of prohibited acts and of prohibited consequences include both severe physical and severe mental damage to health, and in this sense they cover both aggravated physical and severe mental pain, and both physical and mental suffering (including severer forms of so-called post-traumatic stress syndrome). These issues are therefore not in doubt either in criminal law theory or in judicial practice in the Republic of Slovenia. [10]

39. Given that a prison sentence of between six months and five years is envisaged for the infliction of intentional aggravated bodily harm in its basic form (article 134/I of the KZRS) and a prison sentence of between 1 and 10 years for grievous bodily harm in its basic form (article 135/I of the KZRS), and in accordance with the general punishability of attempts to commit criminal offences for which a prison sentence of three or more years can be pronounced

by law (article 22 of the KZRS), attempts to commit these two criminal offences are also punishable (this involves criminal offences as defined by the provision of the second sentence of article 4/I of the Convention against Torture). Since for both cases the prescribed sentence is (more than) three years' imprisonment, in accordance with the general provision of article 26/II of the KZRS, unsuccessful solicitation as a form of complicity or participation is also punishable. Because of the aforementioned length of the prescribed sentences for both criminal offences, and because the Penal Code does not envisage any special criminal prosecution or prosecution initiated by a proposal, in accordance with the general regulations of the Criminal Procedure Act (Ur. l. RS No. 63/94 – hereinafter: ZKP), both criminal offences are primarily prosecuted by the State prosecutor ex officio. The relatively high envisaged sentences, the punishability of attempts, official prosecution, and the jurisdiction of circuit criminal courts as higher forms of first-instance judiciary (in accordance with the provisions on the effective jurisdiction of courts, pursuant to article 25/I of the ZKP and articles 100 and 101 of the Courts Act – Ur. l. RS No. 19/94, the court's composition is one judge and two lay judges) are the reasons why Slovene criminal law deems the criminal offences under discussion to be "offences of a serious nature" within the meaning of article 7/II of the Convention against Torture, despite the fact that "an offence of a serious nature" as such is not used terminologically in Slovene positive substantive criminal law.

40. Slovene criminal law defines officials fairly loosely in article 126/II of the KZRS as "deputies of the National Assembly or members of the National Council; any person carrying out official duties in state bodies or exercising a public function; any other person performing official duties authorized by virtue of law or of regulations issued on the basis thereof; a member of the military appointed under special regulations (...)."[11]

41. When members of a specific profession or workers occupying specific positions are officials within the meaning of penal legislation, judicial practice must address cases on an individual basis. In so doing, it draws from legislation governing individual areas and from the nature of work in individual positions. In practice, officials also include uniformed and plain-clothes police officers, members of national security intelligence services, authorized officials in institutions for the enforcement of prison sentences (guards), and frequently also medical staff and staff employed by social care bodies performing special functions (e.g. members of various expert commissions for assessing ability to work, disability levels, etc.), professional soldiers, including members of the military police, all conscripts in the Slovene Armed Forces, military reserve soldiers when they are taking part in military exercises, etc.

42. According to the KZRS, a number of criminal offences are deemed (qualify) as severe offences if committed by persons in an official capacity, which is why the law, in a separate paragraph of individual incriminations arising from the status of an official as special personal circumstances, opens up a more stringent punitive framework, as the basic form of a given criminal offence (where the perpetrator is a so-called ordinary person). This legislative technique is used by the Slovene legislator, for example, in criminal offences relating to "Violation of the Right to Equality" under article 141/III of the KZRS, "Illegal Deprivation of Liberty" under article 143/II of the KZRS, "Unlawful Search of a Person" under article 147/II of the KZRS, "Criminal Trespass" under article 152/III of the KZRS, etc. (see definitions below).

43. Specific criminal offences can only be committed by an official (or military) person by definition. The KZRS includes the following such criminal offences: "Abuse of Office or Official Duties" under article 261; "Violation of Human Dignity by Abuse of Office or Official Duties" under article 270; "Extortion of Statement" under article 271; and "Maltreatment of a Subordinate" under article 278 (see definitions below) These incriminations have been classified by the Slovene legislator into two special chapters of the KZRS, entitled "Criminal Offences Against Official Duties and Public Authorization" (chapter 26) and "Criminal Offences Against Military Duty" (chapter 27).

44. In the case of some of the most severe criminal offences, such as "Murder" under article 127 of the KZRS, "Rape" under article 180 of the KZRS, or "Sexual Violence" under article 181 of the KZRS, the legislator already lays down relatively heavy punitive frameworks in their basic forms (imprisonment of 10 years or more), but fails to define murder, rape or sexual violence separately when committed specifically by officials, under the qualified forms within the same articles, where the criminal offence occurs during the performance (by abuse) of their job, official position or official duties. Slovene legal theory stresses that such personal circumstances of the perpetrator, or circumstances of the offence within the framework of the legal standard of the legal qualification of "cruelty", the legal qualification of "serious degradation", the legal qualification of "for the purpose of committing another criminal offence", or the legal qualification of "for vile motives", i.e. circumstances envisaged by the KZRS, must be taken into account as qualificatory in the criminal offences under discussion (as a result, the KZRS prescribes a more stringent punitive framework – e.g. see articles 127/II (1) and (2), 180/II and 181/II of the KZRS).[12] In these cases, cumulative criminal liability or the (ideal) concurrence of criminal offences (see below for details) may be taken into account additionally.

45. In accordance with Slovene criminal law, the criminal liability of officials for inflicting aggravated or grievous bodily harm under articles 134 and 135 of the KZRS in appropriate circumstances calls, in particular, for the use of the institute of cumulation of criminal liability by means of the concurrence of criminal offences. Since in the case of the criminal offences of "Aggravated Bodily Harm" under article 134 of the KZRS and "Grievous Bodily Harm" under article 135 of the KZRS, which are otherwise deemed to be relatively severe criminal offences, the legislator failed to envisage that the perpetrator may have the status of an official in any separate paragraph of articles 134 and 135 of the KZRS, or to observe the fact that the perpetrator may commit the offence by abuse of office, official position or official duties, or to define any special criminal offences involving bodily harm and committed in the described manner, judicial practice in Slovenia cannot, in principle, use these circumstances to justify the construct of a special legal qualification in the form of a qualified criminal offence involving bodily harm. Let us therefore take a look at instances of the specific possible concurrence of criminal offences.

46. The criminal offence of the "Violation of Human Dignity by Abuse of Office or Official Duties" (article 270 of the KZRS) is classified under the legal chapter "Criminal Offences Against Official Duties and Public Authorizations". The definition refers to: "An official exercising his office who, by abuse of his office or official duties, treats another person badly, insults him, inflicts actual bodily harm upon him or otherwise treats him in such a way as to affect his human dignity." Attempts to commit this criminal offence are also punishable, as is unsuccessful solicitation as a form of participation. The offence is prosecuted ex officio.

47. The criminal offences of "Extortion of Statement" under article 271/I of the KZS ("an official who, in performing his office or public authorizations, applies force, threat or other unlawful means or methods in order to extort a deposition or other statement from the accused, or from a witness, expert or any other person") and under 271/II of the KZRS ("If the offence under the preceding paragraph has been committed in an extremely violent manner or if, by extortion of the deposition, the perpetrator has caused severe consequences for the accused in subsequent criminal proceedings") are incriminations which are also included in the legal chapter "Criminal Offences Against Official Duties and Public Authorizations". Similarly, attempts to commit these criminal offences are also punishable, as well as unsuccessful solicitation as a form of participation. These offences are also prosecuted ex officio.

48. The situation is similar with respect to the criminal offence of "Maltreatment of a Subordinate" under article 278 of the KZRS, which involves a criminal offence against military duty (classified under the legal chapter "Criminal Offences Against Military Duty"). In its basic form (article 278/I of the KZRS), it refers to: "A military officer who, during or in connection with military service, maltreats his subordinate or violates his human dignity." In its qualified form (article 278/II of the KZRS), it adds: "If a military officer commits the offence under the previous paragraph against more than one person." These two forms also envisage liability for attempts to commit these offences, as well as for unsuccessful solicitation. The offences are prosecuted ex officio.

49. In its qualified form under article 143/II of the KZRS, the criminal offence included in the legal chapter entitled "Criminal Offences Against Human Rights and Fundamental Freedoms", "False Imprisonment", refers to "an official" who "through the abuse of office or of official authority (...) unlawfully incarcerates another person or keeps him incarcerated or otherwise deprives him of freedom of movement", while paragraph IV of the same article adds "whoever either deprives another person unlawfully of his liberty for a period exceeding one week or acts so in an aggravated manner". As in the previous cases, this criminal offence is prosecuted ex officio, and its attempts, as well as unsuccessful solicitation as a form of participation, are punishable.

50. Similar treatment is stipulated for the criminal offence included in the same chapter: "Violation of the Right to Equality" under article 141 of the KZRS. A special form specified in article 141/III refers to "an official who, through abuse of office or of official authority (...) due to differences in respect of nationality, race, colour of skin, religion, ethnic roots, gender, language, political or other beliefs, status of birth, education, social position or any other circumstance, deprives or restrains another person of any human right or liberty recognized by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such discrimination", or "prosecutes an individual or an organization due to his or its advocacy of the equality of people". Again, this criminal offence is prosecuted ex officio, and attempts and unsuccessful solicitations, as forms of participation, are punishable.

51. According to Slovene criminal law, criminal liability for inflicting aggravated and grievous bodily harm can, in principle, be cumulative, meaning that it can be combined with liability for the criminal offences of "Violation of Human Dignity by Abuse of Office or Official Duties", or "Extortion of Statement", or "Maltreatment of a Subordinate", or "False

Imprisonment", or "Violation of the Right to Equality". If, for example, the perpetrator of the criminal offences under articles 270, 271, 278, 143 and 141 of the KZRS at the same time intentionally inflicted the injuries specified as criminal offences under articles 134/I and 135/I of the KZRS, due to the different subjects of protection (on the one hand protection of ex officio duty, and on the other protection of the integrity of the human body), in principle he is liable for committing several criminal offences within (ideal) concurrence, either in their final forms or in the form of an attempt, or in the form of various combinations of final forms and attempts. Due to the diversity of criminal offences involving the infliction of aggravated or grievous bodily harm and other criminal offences under discussion, the concept of consumption or speciality, as a basis for apparent concurrence is not possible in principle, nor are evaluated inclusions under aggravated and grievous bodily harm, or vice versa.

52. Slovene criminal law theory has not yet taken an explicit position with regard to all other possible instances of the cumulation of the aforementioned criminal offences. It can generally be interpreted that it advocates concurrence (that is, the cumulation of criminal liability) between: criminal liability for violation of the right to equality under article 141/III of the KZRS and extortion of statement under articles 271/I or 271/II of the KZRS; between violation of the right to equality under article 141/III of the KZRS and the maltreatment of a subordinate under articles 278/I or 278/II of the KZRS; between extortion of statement under articles 271/I or 271/II of the KZRS and maltreatment of a subordinate under articles 278/I or 278/II of the KZRS; between false imprisonment under article 143/II of the KZRS and maltreatment of a subordinate under articles 278/I or 278/II of the KZRS; between abuse of office or official duties under articles 261/I or 261/II, or articles 261/II or 261/IV of the KZRS and the criminal offences of murder (article 127 of the KZRS), voluntary manslaughter (article 128 of the KZRS), or various types of bodily harm (articles 133-135 of the KZRS); etc.[13]

53. Similarly, in the last five years the Slovene criminal justice system has not yet encountered all possible types of cumulation of the criminal offences discussed above, which is why the judiciary cannot always form a position on individual cases. In particular, in the last five years the Slovene justice system has been faced very rarely with proceedings dealing with persons inflicting severe or extremely severe bodily harm within the meaning of articles 134 or 135 of the KZRS, i.e. where perpetrators would be officials abusing their office or official duties (see the appendix to this report for examples of trials).

54. From legal practice it can be seen that with respect to cumulated liability (real concurrence), rulings have been uniform in relation to criminal offences involving: violations of human dignity by abuse of office or official duties (article 270 of the KZRS) and aggravated and grievous bodily harm (articles 134 or 135 of the KZRS); rape (article 180 of the KZRS) and aggravated and grievous bodily harm; and sexual violence (article 181 of the KZRS) and aggravated and grievous bodily harm. However, the cumulation of false imprisonment (article 134/I of the KZRS) and severe bodily harm has been more disputable. In its recent ruling (relating to the demand for the protection of legality as an extraordinary legal instrument in accordance with Slovene criminal procedure law), the Slovene Supreme Court determined that "all cases" in which "the criminal offence involves aggravated and grievous bodily harm which, in the form of the act itself, would last a specific period of time" represent only an apparent ideal concurrence with the criminal offence of false imprisonment (that is, it can only be severe or grievous bodily harm). With this argument the Supreme Court rejected the cumulation of

criminal liability for the criminal offence of the infliction of aggravated bodily harm with the offence of false imprisonment as part of the legal concurrence in which the perpetrator (who, however, was not an official) pulled the victim around with a noose around his neck while beating him, then partly hanging the victim on a fence and again beating him, which lasted for more than an hour and resulted in severe physical damage to the victim. In short, the Slovene Supreme Court qualifies this act as an offence which involves merely aggravated bodily harm.[14]

55. The most serious intentional encroachments on other people's human rights committed under the circumstances specified in article 1/I of the Convention against Torture are dealt with by the KZRS as various crimes against humanity and international law (genocide, article 373; war crimes against the civilian population, article 374; war crimes against the sick and wounded, article 375; war crimes against prisoners of war, article 376; war crimes of the use of unlawful weapons, article 377; the unlawful slaughtering and wounding of the enemy, article 379; maltreatment of the sick and wounded and of prisoners of war, article 382; enslavement, article 387, etc.). The definitions of crimes against humanity and international law in the KZRS are derived from relevant international acts governing the area of military and humanitarian law, and especially from the Geneva conventions.

56. In the case of all the above crimes against humanity and international law covered by the KZRS, attempts as well as any type of unsuccessful solicitation as a form of participation are also punishable. All crimes are prosecuted ex officio. Due to the exceptional gravity of these crimes (the relationship of consumption) and the relationship of speciality, concurrence (cumulative criminal liability) with the previously described criminal offences included in Slovene criminal law is mostly out of the question.

57. See below for details of Slovene judicial and administrative statistics, and the report on familiarity with, and interpretation and implementation of, articles 2 and 4 of the Convention against Torture.

2.

58. According to the general principles of Slovene criminal law,[15] all the criminal offences under discussion can be committed either in the form of direct commitment (active) or in the form of omission (passive) if it is possible to prove that the perpetrator was under an explicit obligation to prevent the torture or other cruel, inhuman or degrading treatment or punishment (liability for so-called unreal omission under article 8/III of the KZRS).

59. So, for example, a police officer or an authorized official in a penitentiary institution who, on the basis of his work duties is responsible for protecting the life, physical integrity and health of temporarily detained, detained or imprisoned persons, would be deemed liable for omission if he failed to protect an assault on such persons based on an intention to physically harm such persons (self-inflicted injury, injury inflicted by inmates or even by third persons). Similarly, a person can be found liable for the maltreatment of a subordinate if this person, in contravention with his work duties, fails to prevent his subordinate (or even higher-ranked officials) from maltreating other subordinates. These provisions are duly applied to criminal offences against office and official authority.[16]

60. In theory at least, criminal liability for attempts of omission of these criminal offences (in accordance with article 22, in connection with article 8/III of the KZRS) is not excluded.

Article 2

1.

61. In addition to incrimination (the special part of substantive criminal legislation – see above), acts of torture and of other cruel, inhuman or degrading treatment and punishment are explicitly or duly prohibited by other legal sources, in particular those derived from criminal and other punitive (administrative offence and disciplinary) proceedings, general state administration, the execution of criminal and other punitive sanctions, the responsibility of the police and intelligence security services, and the responsibility of the military and of educational and biomedical institutions (in particular, psychiatric treatment).

(a)

62. From the aspect of torture and other cruel, inhuman or degrading treatment or punishment, criminal proceedings and in particular preliminary criminal proceedings, are very problematic in nature. This applies in particular to cases involving the deprivation of the suspect's or accused person's liberty.

(i)

63. Regulation of the deprivation of the accused person's liberty is multifaceted according to the ZKP.

a. General notes on custody, detention and remand

64. The law permits the deprivation of liberty in three fundamental legal circumstances. First (1), if there are reasons for suspecting that a criminal offence has been committed, the law provides for the custody of persons and for the related restriction of movement, including coerced custody in the event of a failure to respond to a written summons (articles 148 and 149).[17] These measures may only last for "the specific period of time necessary" (article 148/II) or no longer than six hours (article 149/I), and with respect to the nature of police work they occur relatively frequently in practice. This is because they incorporate deprivations of liberty executed on the basis of custody warrants issued by various bodies on the basis of different acts (criminal and civil courts, misdemeanours judges, internal affairs bodies, the Ministry of the Interior, and administrative bodies in connection with various administrative procedures in general).

65. According to the ZKP, the second (2) category of deprivation of liberty, less frequent in practice, is the detention of a suspect (article 157). The provision of paragraph (II) of this article reads: "Exceptionally, authorized officers of an internal affairs agency may deprive a person of liberty and detain him if (a) reasons exist for suspecting that he has committed a criminal offence liable to public prosecution ex officio; (b) if detention is necessary for identification, the

checking of an alibi, and the collecting of information and items of evidence for the criminal offence in question (...)." For this kind of detention the law also calls for specific reasons for detention (under article 201 of the ZKP - see below for details).[18]

66. In connection with this and in accordance with the provision of article 19/III of the Constitution of the Republic of Slovenia and of article 157/III of the ZKP, in connection with article 4 of the ZKP, "any person deprived of liberty shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his loss of liberty. A person deprived of liberty shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a lawyer of his own choice and that the competent body is bound to inform, upon his request, his immediate family of his being deprived of liberty". If a suspect who has been deprived of liberty "does not have the means to retain a lawyer by himself, the internal affairs authority shall, upon the request of the suspect, appoint a lawyer for him at the expense of the State, if this is in the interests of justice" (article 4/IV of the ZKP).[19]

67. According to article 157/V of the ZKP, such detention may last 48 hours at most. After that period has expired, the detainee shall be brought before the investigating judge or released.[20]

68. If the detention lasts longer than six hours, the detainee must be issued with a written decision on the reason for his being deprived of liberty, in accordance with article 157/VI of the ZKP.

b. Special provisions on the detention of minors

69. As a concretization of the requirement for the special social protection of young people included in article 53/III of the Constitution of the Republic of Slovenia, the ZKP sets out proceedings against minors in a special chapter, adjusting the proceedings to the psychological and other particular features of juvenile perpetrators of criminal offences. In accordance with article 451/I, outside this special chapter the provisions of the ZKP may be applied only if they are not in contravention with the provisions of this chapter.

70. Since the ZKP does not explicitly prohibit the detention of a minor in the said chapter XVII or anywhere else, authorized officials from the internal affairs body may order the detention of minors, i.e. persons aged between 14 and 18.[21] In accordance with the explicit provision of article 71 of the KZRS, persons younger than that cannot be accused within criminal proceedings and, consequently, the detention or remand of such persons is not permitted by the ZKP.

c. Special provisions on the detention of suspects who are foreign persons

71. Internal affairs bodies are given a special additional authorization (special detention) for depriving foreign persons of their liberty within extradition proceedings, as special proceedings set out by the ZKP. The provision of article 525/I of the ZKP reads: "In urgent cases, where there is a danger that the foreign person might flee or go into hiding, the internal affairs agency shall be allowed to arrest the foreign person upon petition by a foreign competent agency, irrespective of the manner in which the petition was sent." Article 525/II of the ZKP sets out the

duty of an internal affairs body "without any delay to bring the arrested foreign person before the investigating judge of the court with jurisdiction for interrogation". In accordance with the ZKP, all other rights of a detained foreign person are the same as those of persons detained in accordance with the general provisions of the ZKP governing detention.

d. Remand

72. In addition to the institutions of custody of a person and related restrictions of movement, and the detention of a person, the ZKP specifies the third fundamental form of deprivation of liberty within criminal proceedings, i.e. remand in custody.

73. An investigating judge, a panel of three circuit court judges (under article 25/VI of the ZKP), the presiding judge of the circuit court, a juvenile judge, or a panel of judges in the first or second instance may all order the remand of a defendant under specific conditions in accordance with article 20/I of the Constitution of the Republic of Slovenia, under article 201 of the ZKP,[22] article 432 (in abbreviated proceedings before a circuit court) of the ZKP,[23] article 472 (in proceedings involving minors) of the ZKP,[24] article 307/II (evasion of a hearing) of the ZKP,[25] article 361 (passing of a judgement) of the ZKP,[26] article 443/VI of the ZKP,[27] or article 524/III (extradition of a foreign person) of the ZKP.[28]

74. With respect to the institution of remand as the most drastic instrument for ensuring the presence of the defendant, the same act calls in several places for the special dispatch of proceedings (articles 200/II and III and article 432/IV of the ZKP[29]).

75. The proceedings of ordering and extending remand in custody are set out in great detail by the ZKP. So, for example, article 202 (which governs the most frequent remand-ordering procedure in practice) sets out that: "(I) Remand in custody shall be ordered by the investigating judge of the court of jurisdiction. (II) Remand in custody shall be ordered under a written ruling which shall contain: the first name and family name of the apprehended person; the criminal offence with which he is charged; the statutory grounds for remand in custody; information on the right of appeal; a brief statement in which the reason for remand in custody shall be specifically explained; and the official seal and signature of the judge who decrees remand in custody. (III) The ruling on remand in custody shall be served on the person it concerns at the time of apprehension and no later than 24 hours from the time of apprehension or from the time the person was brought before the investigating judge (...). The hour of arrest and the hour of the serving of the ruling shall be indicated in the case file. (IV) The detainee may, within 24 hours of being served the ruling on detention, lodge a complaint against the ruling with the court panel (sixth paragraph, article 25). If the first interrogation of the detainee takes place after the expiry of that time period, the detainee may lodge a complaint during the interrogation. The complaint, a copy of the record of interrogation if an interrogation took place, and the warrant of arrest shall be sent to the panel forthwith. A complaint shall not stay the execution of the ruling. (V) If the investigating judge disagrees with the motion of the state prosecutor for remand in custody to be decreed, the investigating judge shall request that the matter be decided by the panel (sixth paragraph, article 25). The detained person may appeal against the ruling by which the panel has ordered remand in custody, but the complaint shall not stay the execution of the ruling. As regards the ruling and the filing of a complaint, the provisions of the third and

fourth paragraphs of this article shall apply. (VI) In the instances referred to in the fourth and fifth paragraphs of this article, the panel shall be bound to rule on the complaint within 48 hours. (VII) If a detained person has not retained a lawyer, the court shall be bound to appoint one ex officio immediately upon rendering the ruling on remand in custody (...)". Article 203 of the ZKP reads: "(I) The investigating judge shall be bound to give an arrested person information under article 4 of the present Code immediately after the arrested person has been brought to him. Information from the investigating judge and the statement of the arrested thereon shall be entered in the record. The investigating judge shall, if necessary, help the arrested person to find a lawyer. If the arrested person does not secure the presence of his counsel within 24 hours of being advised thereof, the investigating judge shall be bound to interrogate him immediately. (II) If the arrested person declares that he will not retain a lawyer, the investigating judge shall be bound to interrogate him within 24 hours. (III) Where defence is mandatory (...) and the arrested person fails to retain counsel within 24 hours of being advised of that right, or declares that he will not retain counsel, the court shall appoint one for him ex officio. (IV) The state prosecutor shall, immediately after the arrested person has been interrogated, declare whether he intends to request investigation, which request he may make verbally to be entered in the record, after which the investigating judge shall decide whether to detain or release the arrested person. If the investigating judge orders detention and the state prosecutor fails to file a written request for investigation within 48 hours of being notified of the detention, the investigating judge shall cancel detention and release the arrested person."[30]

76. Under the provision of article 208 of the KZRS, the internal affairs agency or the court shall, upon the request of the arrested person, be bound to inform his family of his arrest within 24 hours. The arrest shall be reported to the competent social welfare agency in order to attend, if necessary, to the children and other family members supported by the arrested person.

77. Article 209 of the KZRS sets out that "while the accused is remanded in custody, his person and dignity must not be abused", and that "only those restrictions necessary to prevent flight or connivance which might endanger the success of proceedings shall be allowed". The act defines more concretely that persons of the opposite sex must not be put in the same room (article 209/II of the KZRS), while article 210 also sets out that: "(I) Detainees shall be entitled to 8 hours of uninterrupted rest per 24 hours. They shall also be allowed two hours of outdoor exercise per day (...). (II) Detainees shall be entitled to eat at their own expense, wear their own clothes, use their own bedclothes, buy their own books, newspapers and other things which meet their regular needs, if that does not affect the successful conduct of the investigation. The decision thereon shall be made by the investigating judge in charge of the investigation." Article 211 of the KZRS goes on to state: "(I) With the permission and under the supervision of the investigating judge in charge or of a person designated by him, a detainee may, within the limits of the house rules, receive visits from close relatives and, upon his request, from his doctor and from others as well. Certain visits may be prohibited insofar as they might affect proceedings. (II) With the knowledge of the investigating judge in charge of the investigation, diplomatic and consular officials shall be entitled to visit and talk to, without supervision, their nationals kept in detention. (III) A detainee may exchange letters or have other contacts with persons outside the prison, with the knowledge and under the supervision of the investigating judge in charge of the investigation. The investigating judge may prohibit the sending and receiving of letters and other deliveries or the establishment of other contacts which damage the investigation. The sending of applications or appeals may never be prohibited."

78. A lawyer (defence counsel) is obligatory in all criminal cases involving remand in custody in Slovenia. Under article 202/VII and article 70 of the ZKP, the court is bound to appoint a lawyer ex officio immediately upon rendering the ruling on remand in custody for a detained person who has not himself appointed a lawyer. Defence counsel may communicate with the accused in writing or verbally without supervision (article 74 of the ZKP).

79. Until a charge has been filed in a criminal case, remand in custody may last three months at the most, according to article 20 of the Constitution of the Republic of Slovenia, where the Supreme Court may extend this time limit by a further three months, which gives six months in total.[31] Under the provision of article 207/IV of the ZKP, remand in custody may last two years at most after the charge sheet has been filed. This means that the longest legal remand in custody in a criminal case in the Republic of Slovenia is two and a half years in total. If a sentence is not passed on the accused person within this period, remand in custody shall be cancelled and the accused released. Together with detention under article 157 of the ZKP (maximum 48 hours), the longest uninterrupted deprivation of liberty in a criminal case in the Republic of Slovenia is two years, six months and two days in total.

80. Remand in custody in abbreviated proceedings before the district court, as a lower form of a court of the first instance (according to article 25/I(2) of the ZKP, they deal with cases of criminal offences carrying, as a principal penalty, a fine or a prison term of up to three years), before the filing of a summary charge sheet, may last no longer than eight days under article 432/II of the ZKP, while after the summary charge sheet has been filed, remand in custody may not exceed two years under article 432/III and article 207 of the ZKP. So the longest legally-permitted period of remand in custody in abbreviated criminal proceedings before a district court is two years and eight days. Together with detention under article 157 of the ZKP (maximum 48 hours), the longest uninterrupted legally-permitted deprivation of liberty is two years and 10 days.

81. Remand ordered as the result of the evasion of a trial under article 307/II of the ZKP (subsidiary possibility of ordering remand in custody in criminal proceedings during a trial) may not be longer than one month.[32]

82. A juvenile judge may decree remand in custody for a minor on the basis of article 472/I of the ZKP if there is a danger that the minor will flee or destroy the traces of the criminal offence committed, or in any other way obstruct the investigation. This detention may last up to one month, where the panel of juvenile judges may exceptionally extend this period by two months, which gives three months in total (article 472/II of the ZKP). Together with detention under article 157 of the ZKP (maximum 48 hours), the longest uninterrupted legally-permitted deprivation of liberty is three months and two days.

(ii)

83. Regulation of the ordinary treatment of the accused within criminal proceedings, in particular from the relevant aspect of the Convention against Torture, is dispersed among numerous articles of the ZKP. Article 11 of the ZKP sets out that: "(I) The forcing of a

confession or of any other statement from the accused or from any other participant in proceedings is prohibited." This also applies to all forms of interrogation conducted both by authorised officials of internal affairs agencies and the court.

84. Article 227/VII of the ZKP sets out that "the interrogation shall be conducted with full respect for the person of the accused", while article 227/VIII adds: "Force, threats or any similar means (...) of extorting a statement or confession from the accused must not be used." Article 266/III of the ZKP provides that the application on the accused or a witness of such "medical interventions" or such "agents as would influence their will when giving testimony" shall be prohibited, while under article 266/II "the taking of blood samples and other medical procedures normally undertaken for analysis and the determination (...) of importance for criminal procedure may be performed without the consent of the person being examined", but never in cases in which "such procedures would be harmful to his health" (the ZKP sets out that in all cases the doctor shall judge whether such danger exists). The ZKP also provides that "the court shall undertake to ensure that proceedings are conducted without unnecessary delay and that any abuse of the rights of participants in the proceedings is rendered impossible" (article 15), primarily of participants which represent the state (prosecutors, the police).

85. Since a freely-chosen lawyer charged with suitable effective authorizations is one of the most important guarantees of respect of the rights of the suspect or the accused person in criminal proceedings, we should look in more detail at the general rules on the right to a defence counsel in criminal proceedings in Slovenia.

86. A special chapter of the ZKP entitled "Defence Counsel" says that the accused may have legal counsel at any stage of the proceedings and that, prior to the first interrogation, the accused shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation (article 67). The ZKP also provides for individual cases where the accused person is deaf, dumb or otherwise incapable of defending himself successfully. The same applies if criminal proceedings are conducted against the accused for a criminal offence punishable by 20 years' imprisonment (article 70). According to the explicit provision of article 70/II of the ZKP, the accused shall be bound to have defence counsel from the moment pre-trial detention has been ordered for him until the end of detention. Under paragraph III of the same article, the accused must have defence counsel at the time the charge sheet or private charges are served on him if the criminal offence he is charged with falls within the jurisdiction of the circuit court. If in the cases of mandatory defence referred to in these cases the accused fails to retain defence counsel himself, the president of the court must appoint defence counsel - a lawyer - ex officio for the further course of criminal proceedings until the finality of the judgement; and if the accused has been sentenced to 20 years in prison, he must have defence counsel appointed for him for the extraordinary judicial review as well (articles 70/IV and V).[33]

87. Under the provision of article 178 of the ZKP, interrogation of the accused may only be conducted with the state prosecutor present, while interrogation may be attended by the accused person's defence counsel. The state prosecutor, the injured party, the accused person and his counsel may attend an examination of the crime scene and expert examination. The state prosecutor and defence counsel may attend the search of a dwelling. The state prosecutor, the accused person and his defence counsel may attend the examination of a witness. The police may not interrogate witnesses within the meaning of the ZKP (article 148/III of the ZKP).

(iii)

88. Some special forms of detention in connection with criminal proceedings are permitted to be conducted by private security guards in the Republic of Slovenia. The Private Security and Obligatory Organisation of Security Services Act (Ur. l. RS No. 13/94) sets out in detail the status of a private security guard and his related rights and authorizations. But since these rights and restrictions are very restricted, and since all legal instruments are permitted to be used against unlawful measures by private security guards - as in the case of all other unlawful encroachments on human rights - these provisions are expressly of secondary importance from the point of view of the provisions of the Convention against Torture.

(b)

89. In addition to the ZKP, Slovene legislation governing misdemeanours proceedings envisages the deprivation of the liberty of accused persons. The special proceedings set out in the Misdemeanours Act (Ur. l. RS Nos. 25/83, 42/85, 47/87, 5/90, amended by Ur. l. RS Nos. 10/91, 13/93, 66/93, 35/97, 87/97) govern the temporary custody of accused persons. Under specific conditions specified in article 107 (a well-founded suspicion that the accused has committed an offence while, at the same time, it is not possible to determine his identity, or he does not have permanent residence and there are reasons for believing that he will flee or, by residing abroad, evade liability for committing a more severe offence for which a prison sentence can be pronounced, or if he was caught committing a more severe offence for which a prison sentence can be pronounced and his custody is required in order to prevent further offences), the misdemeanours judge may issue a written ruling on bringing the accused person into custody. Under the provision of article 110, the misdemeanours judge must notify the family of the detained person of his ruling, "unless this person opposes this or if, with respect to the duration of the detention, the distance of his permanent residence or because of any other circumstances, this is not possible". If the detainee supports children and other family members, the responsible social care body must be notified of this in order to take all necessary steps to provide support for these persons.

90. Such detention may, in any case, last "24 hours at most, starting from the hour the accused person was brought into custody" (article 107/IV). During this time the detainee must be interrogated, and a misdemeanour decision issued or the detainee released. Under the explicit provision of article 79, the accused person (as in all cases involving offences) has the right to appoint a defence counsel; in relation to these issues, however, this is never obligatory.

91. Under article 109 of the Misdemeanours Act, officials authorized by internal affairs agencies may deprive an accused person of his liberty even without the ruling of the misdemeanours judge and may immediately bring him before the misdemeanours judge. They may do so only if the accused person was caught committing the offence, if it is not possible to determine his identity, if the accused person does not have permanent residence, or if "circumstances exist for believing that the accused person will continue to commit offences or repeat the same offence" (article 109/I). If the perpetrator is caught committing an offence outside the official hours of the misdemeanours judge and "circumstances exist for believing that the perpetrator might flee or continue to commit offences or repeat the same offence", the detention may last up to 24 hours (article 109/II). A ruling on such detention must be made in

writing (article 109/III). Under the provision of article 79, authorized officials of internal affairs agencies must ensure that the detainee appoints a defence counsel, and under article 110 they must notify his family, "unless this person opposes this or if, with respect to the duration of the detention, the distance of his permanent residence or because of any other circumstances, this is not possible". If the detainee supports children and other family members, the responsible social care body must be notified of this in order to take all necessary steps to provide support for these persons.

92. The Misdemeanours Act governs protective custody separately. Under the provision of article 108, authorized persons of internal affairs agencies may, on their own or on the basis of a ruling by the misdemeanours judge, bring into custody a person "who was caught committing an offence in a state of drunkenness" and there is a "danger that he will continue to commit offences" (article 108/I), and keep him in custody until he sobers up, but for no longer than 12 hours. This type of custody must have the form of a protocol - in other words, a ruling must be given in writing.

93. Similarly and under certain conditions, protective custody is also set out in the Defence Act. Under the provision of article 66/II, the military police may bring into custody a "military person who, under the influence of alcohol or other intoxicating substances, disturbs public peace and order or military discipline, and keep him in custody until he sobers up but for no longer than 24 hours". This military protective custody may thus last twice as long as civil protective custody (under the Misdemeanours Act).

94. Since, like custody under the ZKP, custody under the Misdemeanours Act is, as a rule, executed in police station premises in accordance with the Rules on the Exercise of the Authorizations of Authorized Officials of Internal Affairs Agencies, article 122 of the Rules on Police Stations, as a special internal legal act by the Slovene Ministry of the Interior, stipulates that the police unit officer on duty is responsible for the correct execution of custody and the correct treatment of the person brought into custody. He must supervise this person during custody and is responsible for his release when the reasons for custody cease to exist, or when the legal time limit for keeping a person in custody expires. If the police unit official on duty estimates, on the basis of statements by the person in custody, that this person is sick, injured or is suffering from severe intoxication with alcohol or other intoxicating substances or toxins, he must, in accordance with the Rules on Police Stations, call a doctor or ensure the transport of the person in custody to the nearest health institution in order to ensure professional medical diagnosis and, if necessary, medical assistance for the person in custody.

95. According to the Rules on the Exercise of the Authorizations of Authorized Officials of Internal Affairs Agencies, custody premises in police stations must meet health, safety and hygiene requirements, while persons kept in custody for more than 12 hours must also be provided with food.

96. Interrogation of the accused within misdemeanours proceedings is set out in detail by the Misdemeanours Act. Article 114 specifies that interrogation shall be "conducted with full respect for the person of the accused", and that "force, threats or any similar means of extorting a statement or confession from the accused may not be used". As already mentioned, the accused

may have legal counsel at any stage of the proceedings (article 79), and the defence counsel shall be entitled to do anything the accused is entitled to do, to the advantage of his client (article 79/IV).

97. Special additional rights of the defence may be exercised within misdemeanours proceedings involving accused persons who are minors (under article 43 of the Misdemeanours Act, minors are deemed to be persons aged between 14 and 18; persons younger than 14 cannot be accused in misdemeanour proceedings). Under article 234, minors are entitled to the special right to be instructed on the course of proceedings against a minor, to put forward motions during the proceedings, and to draw attention to facts and evidence important for making a correct decision and contributed by: social care bodies, the parents of the accused, or the adoptive parent, foster parent or custodian of the accused. Under the provision of article 231/II, in carrying out procedural acts at which the minor is present and, in particular, during questioning, agencies participating in proceedings shall act considerately and with due regard for his mental development, sensitivity and personal characteristics, and avoid criminal proceedings which exert an adverse effect on his development. The Misdemeanours Act specially requires that all agencies participating in proceedings against a minor "shall be obliged to take quick measures in order to complete the proceedings as soon as possible" (article 225).

98. The most severe punitive sanction under misdemeanour proceedings is a prison sentence of up to 60 days (article 29 of the Misdemeanours Act). Under the provisions of articles 44 and 46 of the Misdemeanours Act, this sentence may be imposed only on adult perpetrators. The sentence is enforced in accordance with chapter VI of the Criminal Sanctions Enforcement Act. The provisions of the Criminal Sanctions Enforcement Act, used in criminal proceedings with the specific extenuation specified in articles 98-101 of the Criminal Sanctions Enforcement Act, duly apply to this enforcement (see below for details).

(c)

99. Article 50 of the Internal Affairs Act (Ur. l. SRS Nos. 28/80, 38/88, 27/89, amended by Ur.l. RS Nos. 8/90, 19/91, 4/92, 58/93, 87/97)[34] provides for an additional, special, and with respect to the regulations governing criminal proceedings, misdemeanours and defence, subsidiary possibility of detaining people. Authorized officials of internal affairs agencies may "keep in custody a person who disturbs public peace and order if public peace and order cannot be re-established or if the threat cannot be eliminated in any other manner". This type of custody may last 24 hours at most; exceptionally, the director of the responsible internal affairs agency or the authorized person thereof may order custody of up to three days if the reasons specified in article 50/II of the Internal Affairs Act exist (the identity of the person in custody must be determined; the person in custody has been extradited by foreign security agencies and the person must be delivered to the responsible agency; the highest-ranking representatives of foreign or domestic authorities or political bodies, or the highest-ranking representatives of international organizations, must be protected).

100. In all cases involving custody under the Internal Affairs Act, when a person is detained in the place of his permanent residence for more than six hours, or if the person demands this, the internal affairs agency is obliged to notify his family or other persons specified by the person in

custody of his detention (article 50/III). In addition, the responsible social care body must be notified of the custody ex officio in order to take all necessary steps to ensure support for children and other family members of the person in custody.

101. In all cases involving custody under the Internal Affairs Act, the person in custody must be issued with a written decision on custody within six hours.

(d)

102. According to the general provision of article 55 of the Basic Rights Arising from Labour Relations Act (Ur. l. SFRY Nos. 60/89 and 42/90, amended by Ur. l. RS No. 4/91), criminal proceedings for disciplinary offences which are labour-related and, as such, important from the aspect of public law, do not envisage any deprivation of liberty. The accused nevertheless has the right to a defence counsel and the right to cross-examination, in which the trade union has the right to take part (article 62/II). The proceedings are public (63/I).

(e)

103. Clearly, from the aspect of torture and other cruel, inhuman and degrading treatment or punishment, the enforcement of criminal sanctions is, by its very nature, very problematic. The general section of the KZRS, in the form of the chapter entitled "Fundamental Provisions on the Enforcement of Criminal Sanctions" (chapter 10), requires that "persons against which criminal sanctions are being implemented (...) may be deprived of or have their constitutional and legal rights encroached upon only as far as is necessary for a particular sanction to be implemented" (article 106/I), adding that "a person against whom a criminal sanction is being implemented shall not be subjected to torture or any other form of cruel, inhuman or degrading treatment. Any person who has suffered such treatment shall have the right to legal redress" (article 106/II). Since the Convention against Torture and, along with it, the definition of torture specified in article 1/I of this Convention is part of the Slovene legal system at the constitutional level and therefore subject to direct application, the quoted provision of the KZRS needs to be interpreted as prohibited action as laid down by the Convention against Torture.

104. According to the valid Slovene legal system (the Constitution of the Republic of Slovenia and the KZRS), there is no capital punishment, life imprisonment or physical punishment in Slovenia.

105. The heaviest single sanction that can be pronounced in criminal proceedings in the Republic of Slovenia for adult perpetrators of (the most severe) criminal offences is 20 years' imprisonment.

106. The heaviest sanction which, according to valid Slovene law, can be pronounced for under-age perpetrators of (the most severe) criminal offences is juvenile detention for five years; for criminal offences for which a sentence of 20 years' imprisonment may be imposed, a juvenile detention sentence may not be imposed for more than 10 years (article 89/II of the KZRS). In all cases, the juvenile detention sentence can only be imposed if the juvenile offender was no younger than 16 at the time the offence was committed, and if he committed an extremely severe

offence. If an adult is tried for a criminal offence he committed as a young adult and if he has reached the age of 21 by the end of the trial, the court may sentence him to imprisonment (article 93/II of the KZRS).

107. The article entitled "Treatment of Offenders" (General Section, article 108 of the KZRS) states: "(I) Offenders shall be subjected to humane treatment respecting their inherent human dignity as well as their physical and mental integrity. (II) Medical or psychological methods or methods of reform which interfere with the offender's personality and whose implementation the offender repudiates with just cause shall not be allowed to be implemented."

108. More detailed provisions on the treatment of offenders are included in the Criminal Sanctions Enforcement Act (Ur. l. RS No. 17/78, last amended by Ur. l. RS No. 30/98 – hereinafter: ZIKS). Article 11 states that: "(I) Offenders must be ensured the opportunity, in accordance with their desires (...), of acquiring knowledge during their sentence and , in particular, be allowed to complete elementary education and acquire a vocation. (II) Conditions must be created for offenders to engage in cultural/educational activities and physical education, to be informed of developments in Slovenia and abroad, and to engage in all other activities which benefit their physical and mental health." Under article 45/II of the ZIKS, the premises in which offenders reside must "meet health, spatial, hygiene and educational requirements", and article 46 of the ZIKS states that their food must suffice "for the sustenance of their health and complete physical fitness". The ZIKS also sets out that councils of inmates must be set up in institutions for the enforcement of criminal sanctions through which inmates may participate in an organized manner in the organization and implementation of individual activities and activities which are of collective importance, such as: production work, education, cultural/educational work and sports, diet, the maintenance of order and cleanliness" (article 12/I of the ZIKS). The representative of the council of inmates is also appointed as a member of the council of the institution for the enforcement of sanctions, which is the supreme body of the institution responsible for issues relating to the education, reform, training and procedure of treatment of offenders (article 29/I of the ZIKS).

109. The Criminal Sanctions Enforcement Act contains a special chapter on the enforcement of juvenile detention sentences (chapter VII, articles 102-107). The remaining provisions of the act are applied, if not otherwise provided by the provisions of this chapter (article 102 of the ZIKS). So, for example, convicted minors must "spend their spare time, as a rule, in the fresh air, for no less than three hours a day" (article 105 of the ZIKS). They may exchange letters with their parents and other immediate relatives without any restrictions (article 106 of the ZIKS), etc.

110. The ZIKS also contains several special provisions regarding the enforcement of the most severe correctional measure against minors: the penal sanction of committal to a correctional centre (articles 201-212 of the ZIKS - see below for details).

111. The heaviest disciplinary sanction for prisoners is defined in article 77/II (5) of the ZIKS: committal to a confinement cell for up to 21 days without the right to work.[35] It is pronounced by the governor of the correctional institution, or by other employees at the institution under his authorization, if the prisoner has committed the most severe breaches of prison rules, work discipline and official orders (article 78/I of the ZIKS). Prior to the pronouncement of this disciplinary sanction, the prisoner must be "questioned and his statement of defence examined"

(article 79/I of the ZIKS). The pronouncement and execution of this sanction is not permitted "if the execution is likely to pose a threat to the prisoner's health" (article 78/II of the ZIKS). During the enforcement of this disciplinary sanction, the prisoner has the right to a daily outdoor walk (article 78/III of the ZIKS).[36]

112. If, during his sentence, a prisoner commits an offence for which a monetary fine or a prison sentence of up to one year is prescribed, the provision of article 82/I sets out that a disciplinary sanction shall be imposed on him. In this case the disciplinary sanction of committal to a confinement cell for up to 30 days may be imposed. In this disciplinary procedure, and during the enforcement of this disciplinary sanction, the prisoner has the same rights as those applying to the disciplinary sanction of ordinary committal to a confinement cell (see above).

113. Under the provision of article 107 of the ZIKS, the disciplinary sanction of committal to a confinement cell may be pronounced for no more than seven days for juvenile offenders during juvenile detention if they commit one of the most severe breaches of prison rules, work discipline or official orders. In accordance with article 102 of the ZIKS, the pronouncement procedure and the possibility of a complaint are the same as those applying to adult prisoners. Special mention must be made of article 107/III of the ZIKS, which reads: "In the event that the disciplinary sanction of committal to a confinement cell is pronounced for a juvenile offender for the second time within three months, the governor of the correctional institution must notify the RS Ministry of Justice of any further pronouncements of this disciplinary sanction" (Administration for the Enforcement of Criminal Sanctions at this ministry).

114. The heaviest disciplinary sanction against minors sentenced to the correctional measure of committal to a correctional centre is "committal to a special room for seven days", as specified in article 209 of the ZIKS.[37] This disciplinary sanction is pronounced by the warden of the correctional centre. Prior to pronouncing this disciplinary sanction, the minor must be "questioned and his statement of defence examined" (article 209/II of the ZIKS). This disciplinary sanction is pronounced in the form of a written decision (article 209/II of the ZIKS).

115. Various secondary legislation regulations issued on the basis of the Criminal Sanctions Enforcement Act, and in particular the Regulations on the Enforcement of Prison Sentences (Ur. l. SRS No. 3/79) and the Regulations on the Enforcement of the Correctional Measure of Committal to a Correctional Centre (Ur. l. SRS No. 3/79), set out in detail the rights and obligations of offenders sentenced to different sentences. The Regulations on the Enforcement of Prison Sentences include provisions which specify that the living premises of convicts must be "bright, dry, airy and sufficiently large" (article 24), that every convict must have "his own bed, equipped with a suitable mattress, two blankets, a pillow and an adequate number of sheets" (article 26/I), that the convict's bedlinen must be "changed at least every 14 days" (article 26/II), that convicts must receive "a minimum of three daily portions of food: breakfast, lunch and dinner", that this food must be "fresh and varied, must include vitamins, must be tasty, and must be distributed in suitable dishes with suitable knives, forks and spoons" (article 29). In addition, the exerting of pressure by groups or individuals on other groups or individuals, and mutual confrontation or intimidation, abuse, insults, humiliation or contempt", etc. are not allowed (article 66). The Regulations on the Enforcement of the Correctional Measure of Committal to a

Correctional Centre similarly set out that minors' free time must be organized in such a way that "they spend enough time outdoors, including walks, sports and other activities", etc. (article 14).

116. In the Republic of Slovenia only the criminal sanctions which meet the above legal criteria are permitted to cause any "pain or suffering which results from legal sanctions exclusively and which is inseparable from these sanctions or is caused by these sanctions"; such pain and suffering (excluded by the concept of "torture" within the meaning of the Convention) is explicitly permitted by the last sentence of article 1/I of the Convention against Torture.

(f)

117. The special administrative provisions on the deprivation of liberty are incorporated in Slovene positive law governing the procedure of the expulsion of foreign persons.[38] Article 28 of the Foreign Persons Act (Ur. l. RS No. I - 1/91, 44/97) specifies: "(...) For foreign persons who reside in the Republic of Slovenia illegally and who, for whatever reason, cannot be immediately removed but there is a suspicion that they will attempt to evade the measure, the national administrative body responsible for internal affairs shall order that they reside in the transitional centre for foreign persons, but for no longer than 30 days. For foreign persons who, due to objective circumstances, cannot immediately leave the Republic of Slovenia, the national administrative body responsible for internal affairs may order that they reside in some other place of residence". Separately, with respect to minors, article 29 of the same act specifies: "The apprehending of a foreign minor who has arrived in the Republic of Slovenia without a valid travel document and without the knowledge or permission of his lawful representatives, or who has remained without special protection, supplies and means of survival, or who has failed to act in accordance with the regulations of the Republic of Slovenia, shall be immediately reported by the authorized officials of the internal affairs agency to the diplomatic/consular representative office of the country of which the minor is a national, or to the security bodies of a neighbouring country; the minor shall be handed over to the body responsible for social care based in the municipality in which the minor was apprehended." Under the provision of article 30, "in the event that it is not possible for the minor foreign person referred to in the preceding article for whatever reason to be immediately extradited to the body of the country of which he is a national, the body responsible for social care shall place the minor in the transitional centre for foreign persons, in the department for minors".

(g)

118. Legal protection against different forms of abuse in medical activities, relevant to the Convention against Torture, is contained in different legal acts in Slovenia.

119. Articles 64-66 of the Penal Code of the Republic of Slovenia set out the criteria for the pronouncement of forced treatment as a penal sanction (the security measures of compulsory psychiatric treatment and care in a health institution, compulsory psychiatric treatment in the community, and the compulsory treatment of alcoholics and drug addicts).

120. The text of article 64 of the KZRS reads: "(I) Compulsory psychiatric treatment and detention shall be ordered for a perpetrator who commits a criminal offence in a state of insanity or diminished responsibility, if, given the gravity of the offence and the gravity of the

perpetrator's mental disturbance, the court has ascertained that the perpetrator might commit serious criminal offences against life, limb, sexual integrity or property if he were at liberty and that such danger can be avoided only by means of medical treatment and detention in a health institution. (II) The discharge of the perpetrator from the health institution shall be ordered by the court upon its determining that treatment and detention are no longer necessary. After the lapse of each consecutive period of one year, the court shall decide whether further treatment and custody are necessary. (III) The measure outlined in the first paragraph of the present article may be ordered for a perpetrator deemed to be not responsible for his actions for a period not exceeding 10 years. (...)".

121. The text of article 65 of the KZRS reads: "(I) Compulsory psychiatric treatment in the community shall be ordered for a perpetrator who commits a criminal offence in a state of diminished responsibility when the court has ascertained that such a measure is necessary and represents a sufficient guarantee that he will not commit further serious criminal offences. (...) (III) Compulsory psychiatric treatment in the community may be ordered for a period not exceeding two years. After a period of one year, the court shall consider whether further compulsory psychiatric treatment is necessary. (IV) If the perpetrator is not willing to undergo treatment in the community, if he gives up the treatment of his own free will or if the treatment does not prove successful, the court may, under conditions outlined in the first paragraph of the preceding article, order the measure in question to be exercised in an appropriate health institution. In such a case, the period of treatment may also not exceed two years. After a period of one year, the court shall consider whether further compulsory treatment is necessary."

122. The text of article 66 of the KZRS reads: "(I) The court may order compulsory medical treatment for a perpetrator who committed a criminal offence due to his addiction to alcohol or drugs and is deemed likely to commit further offences. (II) The measure outlined in the preceding paragraph may be carried out in a penal or health institution. Time spent in the health institution shall count towards the serving of the sentence. (III) When pronouncing a suspended sentence, the court may order the perpetrator to submit himself to treatment at liberty, whereby, in particular, his willingness to do this shall be taken into account. If the perpetrator either does not commence his treatment with good reason or gives up the same of his own free will, the court may revoke the suspended sentence. (IV) If the measure in question has been ordered in addition to a sentence of imprisonment, it may be exercised for as long as the sentence is served, while if it has been ordered within the terms of a suspended sentence, it may not last for more than two years."

123. "A juvenile offender who has suffered disturbance in his physical or mental development shall be committed to an appropriate training institution (...). The court may order such a measure in place of compulsory psychiatric treatment and detention in a health institution if the necessary treatment and detention of the offender can be provided in the institution and the purposes of the security measure in question can thereby be achieved. The offender shall stay in the institution as long as is necessary for his training, treatment or detention, but for not more than three years."

124. This, among other things, is specified by article 81 of the KZRS. The enforcement of this correctional or correctional/security measure is set out in more detail in articles 213 and 214 of the ZIKS.

125. Special mention needs to be made of the provision of article 108/II of the KZRS, under which "medical or psychological methods or methods of reform which interfere with the offender's personality and whose implementation the offender repudiates with just cause shall not be allowed to be implemented", as well as the provision of article 155 of the ZIKS which, with respect to the security measure of compulsory psychiatric treatment and protection in a health institution, specifies: "In the case of persons against whom the security measure of compulsory psychiatric treatment and protection in a health institution is being implemented, only those restrictions relating to movement and contact with the outside environment shall be permitted which are necessary for their protection and treatment".

126. In the Republic of Slovenia only compulsory treatment, as a criminal sanction (safety or correctional or correctional/security measures), which meets the above legal criteria is permitted to cause any "pain or suffering which results from legal sanctions exclusively, and which are inseparable from these sanctions or are caused by these sanctions"; such pain and suffering (excluded by the concept of "torture" within the meaning of the Convention) are explicitly permitted by the last sentence of article 1/I of the Convention against Torture.

127. According to the valid legal system of Slovenia (Healthcare Activities Act - Ur.l. RS Nos. 9/92, 37/95, 8/96), forced medical treatment is, in principle, not permitted (article 47). The free consent of the patient is an indispensable condition for a medical intervention to be legal. The only exceptions are cases in which doctors, in the interests of the patient's health, may (or even must) conceal specific facts from the patient's medical documentation ("discreet silence" according to article 47/I); this kind of patient consent is legally valid although, due to insufficient information, it cannot be considered free. Furthermore, there are proxy consents where, on behalf of persons aged under 15 and persons in custody, consent is given by their parents or custodians (article 47/II), urgent medical interventions (article 48 in accordance with the criteria of extreme necessity set out by criminal law - article 12 of the KZRS), and cases of patients "who, as a result of their mental disease, threaten their own lives as well as the lives of other people, or cause damage to themselves or other people" (article 49/I). The latter categories of patients are, for obvious reasons, particularly problematic from the point of view of the Convention against Torture.

128. Slovene positive law regulates the material (substantive) conditions for forced detention and treatment in a psychiatric health institution outside criminal proceedings in the Non-Contentious Proceedings Act (Ur. l. RS No. 30/86). Chapter 7 of this act sets out in detail the procedure for the detention of persons in psychiatric health organizations, and when these persons are not dealt with in criminal proceedings, the provision of article 70 defines the material conditions for detention: "when these persons, due to their mental disease or state of mental health (...), threaten lives or cause serious damage to themselves or to other people".

129. Forced detention (under article 71/III of the Non-Contentious Proceedings Act) is also deemed to be an act where "from the behaviour (of the detained person), expert findings on this person's state of mental health and other circumstances, it is clear that this person can express his own free will but does not want to undergo treatment in a health organization, when this person cannot express his own free will, or when the act involves a minor or a person who has been

deprived of his capacity to do business". The law permits such detention only in extreme cases, when the possibilities for resorting to less radical encroachments on the patient's rights in order to achieve the objectives have been exhausted.

130. Valid Slovene law also incorporates various procedural legal systems of supervision of the legality of the implementation of forced medical treatment. These include criminal law and civil non-contentious, as well as administrative legal proceedings. The ZKP sets out in detail the procedure in cases where the security measures of compulsory psychiatric treatment and protection in a health institution or compulsory psychiatric treatment in the community for mentally-incapacitated perpetrators of criminal offences are pronounced. Under article 491/II of the ZKP, the defendant must, in all such cases, have a defence counsel from the time of the submission of a proposal for pronouncing the security measure of compulsory psychiatric treatment. Under article 492/II of the ZKP, psychiatric experts must be present, and the defendant's immediate relatives must also be summoned: the spouse, the parents of the defendant and, possibly, other close relatives as well. The defendant shall be summoned if his condition permits his attendance at the trial.

131. Article 496 of the ZKP sets out the procedure for the supervision of the enforcement of these security measures, and the extension or cancellation of these measures: "The court of original jurisdiction which pronounced the security measure of compulsory psychiatric treatment and custody of the perpetrator in a medical institution, or the compulsory psychiatric treatment of the perpetrator at liberty, shall, ex officio or upon the motion of the medical institution and on the basis of the opinion of specialists, adopt all further decisions in respect of the duration and modification of the measure referred to in articles 64 and 65 of the Penal Code of the Republic of Slovenia", states the provision of article 496/I of the ZKP. Under paragraph III of the same article, the perpetrator must have defence counsel during the procedure.

132. Article 49/II of the Healthcare Activities Act demands that the admission of a patient who, without his consent, was directed or admitted to treatment in a psychiatric hospital (because he threatened his own life or the lives of other people, or caused damage to himself or to other people due to his mental disease) "must be reported by the authorized person of the hospital to the court of jurisdiction within 48 hours of admission".[39] The Non-Contentious Proceedings Act sets out in detail the ex-officio judicial supervision of involuntary detention in a (psychiatric) health institution. Within this procedure the court must, as soon as possible, question the detained person ex officio, unless the questioning would damage his health or if, given his medical state, this is not possible[40] at all (article 74). The court must also question the doctors in charge of treatment and "other persons who can provide data on the mental state of the detained person" (article 75/I), and must order "that the detained person be examined by a specialist psychiatrist from another health organization" (article 75/II). No later than 30 days from the receipt of notification by the authorized person of the hospital on the detention of the patient for psychiatric treatment, the court must issue a decision on this matter. If it orders detention, this detention may last one year at most (article 76/II). This decision must be submitted to the detained person, his representative (if he has one), his custodian, the social care body and the health organization (article 77/I).

133. In the procedure of forced detention and treatment in a health institution outside criminal proceedings (that is, in accordance with the Healthcare Activities Act and the Non-Contentious Proceedings Act), a legal representative is not obligatory in Slovenia.

134. On 4 April 1997 the Republic of Slovenia also signed the "Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine" (Council of Europe, 1997).

2.

135. There are a number of other pieces of primary and secondary legislation in Slovenia which, in one or another way, touch upon issues relating to torture and other cruel, inhuman or degrading treatment or punishment. In the area of national defence, for example, the Defence Act specifies in various places that all forms of military and civil defence are based on and carried out in accordance with the principles of the international military code and adopted international obligations (article 4 and, in a similar way, article 7/II). Article 43/VIII further sets out that: "No one may issue a command or be under an obligation to carry out an order if it is obvious that by doing so he would commit a criminal offence or violate the provisions of the international military code". Separately, it stresses that "military personnel shall be criminally liable under the Penal Code of the Republic of Slovenia" (article 56/I).[41] The provision of article 57, with respect to violations of military discipline, additionally qualifies as disciplinary offences: "offensive or violent behaviour towards subordinates, superiors or military personnel of the same rank, or towards civilians".

136. There are even more details contained in the Rules of Service in the Slovene Armed Forces (Ur. l. RS No. 49/96); according to point 2 of the rules, they apply to all persons performing military service in the Slovene armed forces (both professional and non-professional military persons). Point 6 includes the rule that military persons must "respect the person, human rights and basic freedoms of all members of the Slovene armed forces in accordance with the Constitution and statute, (and) respect the human rights and basic freedoms recognized by basic United Nations acts, as well as the human rights and basic freedoms recognized by international military law". Under point 15, members of the Slovene armed forces are bound, in carrying out military tasks in peacetime, "to consistently comply with international military and humanitarian law", while under point 21 "military persons must act in accordance with general moral principles". Under point 22, "with their example and work, military persons shall positively influence their subordinates", while under point 25, "superiors and subordinates (...) shall express mutual respect and mutual trust", "relations between military persons, respect for superiors and subordinates and civilian persons in the Slovene armed forces shall be based on the general principles of civil society". Under point 28, "military persons shall consistently respect human rights and basic freedoms, and the principles of international military and humanitarian law", and "any action in contravention with these principles shall be deemed dishonourable and in contravention with the interests of the Slovene armed forces and national defence".

137. As for workers at internal affairs agencies, article 6/I of the Internal Affairs Act states: "In performing tasks under their jurisdiction, workers of internal affairs agencies may use only those coercive measures which are determined by law and which achieve the execution of official tasks with the most harmless possible effects on citizens."

138. The SRS Rules for Exercising the Authorizations of Authorized Persons of Internal Affairs Agencies (Ur. l. SRS No. 44/88) - a particularly comprehensive act comprising 485 articles - sets out in detail police authorizations and the authorizations of members of other services within the RS Ministry of the Interior "whose work is directly linked to the carrying-out of operative tasks" (article 41/I). Article 6 specifies: "In performing tasks under their jurisdiction, authorized persons may use only those coercive measures which are determined by law and which achieve the execution of official tasks with the most harmless possible effects on citizens (...). Persons with whom authorized persons come into contact while carrying out their tasks must be treated considerately and attention must be given to ensuring that authorized persons do not harm their honour and good name, affect their personal dignity, alarm them unnecessarily, or impose unnecessary obligations on them."

139. Article 45/I (3) of the State Administration Workers Act (Ur. l. RS No. 15/90), which governs the obligations of workers employed in state administration, including inspectors, deems the following to be one of the major violations of work duties: "indecent, offensive or in other ways improper behaviour towards (...) parties in procedures at a State body". Those who violate this provision are liable to dismissal (article 45/II).

140. By the nature of the matter itself, a typical potential threat to the human rights of socially-disadvantaged people, including the possibility of torture and other cruel, inhuman or degrading treatment or punishment, is posed by the relation between holders of academic authority and children in schools, particularly within the framework of compulsory schooling. The Slovene Organization and Financing of Schooling and Education Act (Ur. l. RS No. 12/96) and the School Inspection Act (Ur. l. RS No. 29/96), for example, contain a number of provisions that can be understood as instruments of protection against this type of severe encroachment on the human rights of the child. The provision of indent 2 of article 2 of the Organization (...) Act declares that "the aim of schooling and education shall include the observation of children's and general human rights and basic freedoms". Article 35 of the same act requires that schools and nursery schools which carry out publicly-valid programmes shall be entered in a special register (record) at the RS Ministry of Education and Sport, and shall be deleted from the record "if they have been banned from carrying out a publicly-valid programme with a legally-valid decision", including and in particular in cases in which this ban has been pronounced due to violations of the rights of a child. Under article 36 of the same Act, the same applies to deletions from the register (record) of private entities which carry out educational activities (this register is also prescribed to be kept at the RS Ministry of Education and Sport).

141. Indent 1 of article 8 of the School Inspection Act requires a special administrative procedure (including an expert in educational issues) if there is a suspicion of the violation of the rights of a child. Under article 9 of this act, the annual report by the chief national schools inspector, which describes the work of the inspectorate and which the chief inspector is obliged to submit to the RS Minister of Education, must contain a "general assessment of the situation with regard to the observation of the lawfulness and protection of the rights of children and of participants in the educational process, as well as professional workers in nursery schools and schools, data on ascertained violations, pronounced measures and the enforcement of these measures, and data on the number of inspections carried out by individual nursery school and school". If a school inspector determines that the rights of a child have been violated, he must, under article 14 of this act, notify the founder of the nursery school or school of the ascertained

violations and of special measures for eliminating these violations, and propose the introduction of a procedure against these violations, or even a criminal procedure. The inspector must pronounce the measure of suspension from work for the perpetrator if there is a well-founded suspicion that he has committed an offence by "subjecting children or participants in the educational process to physical violence".

142. Similar legal provisions which explicitly or duly refer to the prohibition of torture and other cruel, inhuman and degrading treatment or punishment within the meaning of the Convention against Torture can be found in the Slovene legal system in the following general and abstract legal acts at the lower level: "Instruction on the Use of Coercive Means (Ur. l. SRS No. 25/81, amended by Ur. l. RS Nos. 79/94 and 3/95); "Regulations on the Implementation of Tasks of Authorised Officials in Correctional Institutions" (Ur. l. SRS Nos. 3/79, 2/83, 23/87, amended by Ur. l. RS No. I - 10/91); "Regulations on the Execution of the Correctional Measure of Committal to a Correctional Centre"; "Regulations on the Enforcement of Prison Sentences"; "Instructions on the Treatment of a Minor Who is Evading the Execution of a Correctional Measure" (Ur. l. SRS No. 12/79); etc. Legal acts of an expressly internal character which are not published in the official gazette and which contain explicit or implicit rules regarding the prohibition of torture and other cruel, inhuman and degrading treatment or punishment within the meaning of the Convention against Torture comprise: "Rules on Police Stations" (act issued by the RS Ministry of the Interior); the prison rules for various institutions for the enforcement of criminal sanctions (prepared by the institutions themselves and approved by the RS Ministry of Justice); various instructions by the ministers of defence, of the interior and of justice; and, last but not least, various ethical codes issued by workers engaged in a number of different professions (health workers and police workers, for example).

143. (See the report on article 13 of the Convention against Torture below for a separate discussion of the individual possibilities for appeal with respect to potential torture and other cruel, inhuman and degrading treatment or punishment.)

144. (See the report on article 11 of the Convention against Torture below for a separate discussion of the systematic official supervision of the situation in practice with respect to the interrogation and guarding of persons deprived of freedom of movement, and a discussion of the treatment of these persons in general.)

3.

Statistics and specific features in practice

145. (See the special appendix to this report (Source: National Statistical Office) for details on criminal statistics for 1996 as compiled by the National Statistical Office.)

146. (See the special appendix to this report (Source: RS Ministry of the Interior) for details on criminal statistics for 1996 as compiled by the RS Ministry of the Interior.)

147. It appears worthwhile to include in this report a summary of specific important facts from the official reports issued by individual executive authority bodies of the RS, in particular by ministries, on the practical interpretation and implementation of the Convention against Torture.

(a)

148. Separately, in relation to the deprivation of liberty until a legally-valid ruling or misdemeanours decision is issued, it is worth stressing the well-established practice of internal affairs agencies according to which detained persons are enabled (both technically and, if necessary, financially) to contact their defence counsel by telephone if they so require. If they do not know any defence counsels, the official of the relevant internal affairs agency provides them with a written list of lawyers whose head office is in the area in which the order on the measure of detention has been issued (Source: MNZ RS).

149. The decision on detention, which in accordance with the ZKP is issued by internal affairs agencies, is standardized in terms of form. It contains data on the agency which ordered detention and issued the decision, detailed personal data on the detained person, the duration of detention (the beginning and the end of detention expressed in hours and minutes), the reasons for initiating detention or the reasons for custody, an explanation of the decision, legal instructions on the rights of the detained person in accordance with the ZKP, data on whether the detained person required a defence counsel, the time of arrival of the defence counsel, the possible appointment of a defence counsel by the internal affairs agency, data on the method, time and level of success of informing those persons whom the detained person wished to inform, a special legal instruction in relation to the issued decision, the signatures of the issuer of the decision and the detained person, and data on the date and exact time of delivery of the decision to the detained person (Source: MNZ RS).

150. According to the ZKP, authorized officials do not routinely check whether the detained person enjoys the status of a person with deputy immunity (National Assembly deputy, National Council councillor) or the status of a person with diplomatic immunity. These statuses are observed only if the detained person refers to them separately or if they are otherwise clear.

151. According to the ZKP, detained persons shall not unnecessarily and intentionally be exposed to rain, extreme sunshine, heat, cold, noise, dust, damp, etc. As soon as possible, a detained person must be placed in special detention premises in a suitable police station (Source: NZ RS). In 1995, 1,652 suspects were detained in accordance with the provisions of article 157/II of the ZKP (Source: MNZ RS).

152. The determination of intoxication (with alcohol) as a basis for detention in accordance with the Misdemeanours Act is, in practice, based on the free judgement of the authorized person and only exceptionally on a determination of intoxication using special devices (alcohol breath tests). This type of detention is ordered verbally (under article 108/II of the Misdemeanours Act - in the event of the detention of an intoxicated person the detained person is by definition unable to read or sign the special decisions issued, let alone write an appeal against them). A special official note is always made on this type of detention. These persons are, as a rule, detained in special premises at a police station or police department until they sober up. If they are in need of medical attention, they must be transported to the nearest health institution (Source: MNZ RS).

153. The figures on detention pursuant to article 108/II of the Misdemeanours Act in the RS are as follows: 2,291 in 1993; 221 in 1994; 173 in 1995 (Source: MNZ RS).

154. Detentions in accordance with the Misdemeanours Act are generally ordered verbally, but they must be officially entered in the acts on individual misdemeanour cases, specifying the exact time of the beginning and end of detention. This entry must be signed by the official who ordered detention, where the detainee confirms that he has been informed of the order and its content by supplying his signature (Source: MNZ RS).

155. In accordance with the Regulations on the Exercise of Authorizations of Officials Authorized by Internal Affairs Agencies, the detained person shall be brought, as soon as possible, to the premises of the internal affairs agency, where a proposal for the introduction of a misdemeanours procedure is written. If necessary, the identity of the accused person is determined in the same premises (Source: MNZ RS).

156. The following are the figures for detentions in the RS pursuant to article 109/II of the Misdemeanours Act: 1,097 in 1993; 792 in 1994; 1,601 in 1995 (Source: MNZ RS).

157. Detentions in accordance with the Internal Affairs Act are, in practice, ordered by means of a written decision. The decision is submitted to the detained person within the first few hours of the start of the period of deprivation of liberty (Source: MNZ RS).

158. Persons against whom detention of up to 24 hours has been ordered in accordance with the Internal Affairs Act are, as a rule, detained in the premises of police units or police departments (Source: MNZ RS).

159. In all cases of detention in accordance with the Misdemeanours Act and the Internal Affairs Act, internal affairs agencies must make a suitable official entry on detention in appropriate and relevant records, including the personal data of the detained person, the reason for detention, the exact time of detention, the legal basis for detention, data on informing the detained person of his rights regarding deprivation of liberty, data on the medical state of the detained person, and data on supervision of the detained person. In addition, they must enter in the special book of detentions the personal data relating to the detained person, the agency which ordered the detention, the reasons for detention, the exact times of the beginning and end of detention, and possible injuries suffered by the detained person (including descriptions of these injuries). If the detained person has been dispossessed of any items (either at the location of detention or upon his committal to special detention premises), a special receipt must be drafted and signed by the person who dispossessed the detainee of his possessions and by the detainee. After detention ends, these items must be returned to the detainee and a written record made of this. The detention is also entered separately in the report by the officer on duty at the police station (Source: MNZ RS).

160. No later than upon the committal of the detainee to special detention premises must the detainee be subjected to a search for the purpose of removing from him any items suitable for assault, escape or for the self-infliction of injury (particularly suicide). Detained persons who exhibit tendencies towards the self-infliction of injuries must be supervised throughout their detention.

161. On the basis of a special instruction by the MNZ, police units must notify internal affairs administrations of all detentions on a day-to-day basis. If necessary, they must also notify foreign diplomatic/consular representative offices of relevant detentions (Source: MNZ RS).

162. According to the data provided by the Administration for the Enforcement of Criminal Sanctions at the RS Ministry of Justice, on 1 January 1996 there were 166 detainees, on 1 January 1997 198 detainees, and on 31 December 233 detainees. According to different official positions, the RS Ministry of Justice recognizes that the living conditions for these detainees are often unsatisfactory, particularly because of the shortage of adequate premises or, more precisely, because of the lack of funds for providing such premises (Source: MP RS).

(b)

163. With regard to the practical enforcement of criminal sanctions in the Republic of Slovenia, we can briefly refer to the two annual reports issued by the Administration for the Enforcement of Criminal Sanctions at the Ministry of Justice for 1996 and 1997, to the conclusions from the Report to the RS Government on the Visit to Slovenia carried out from 19-28 February 1995 by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT/Inf (96) 18 - see the appendix to this report for the full text), as well as to the RS Government's reply to this report, including a report on measures for improving those elements which were subjected to criticism during the visit.

164. On 1 January 1996 there were 425 convicts serving time in prison on the basis of sentences pronounced within criminal proceedings in the Republic of Slovenia. Among newly-admitted prisoners, 16 per cent were foreign citizens. On 1 January 1996 eight minors were in juvenile detention in institutions. In 1996 the security measure of compulsory psychiatric treatment and protection in an institution was pronounced for two offenders, and the security measure of the medical treatment of alcoholics and drug addicts for 14 offenders. On 1 January 1996, 20 juvenile offenders were subject to the correctional measure of committal to a correctional centre.

165. On 1 January 1997 there were 439 convicts serving prison sentences pronounced within criminal proceedings and 485 convicts on 31 December 1997. Among newly-admitted prisoners, 16 per cent were foreign citizens. On 1 January 1997 eight offenders were serving juvenile detention sentences, while on 31 December 1997 there were four such offenders. In 1997 the security measure of compulsory psychiatric treatment and protection was pronounced for three offenders, and the security measure of the medical treatment of alcoholics and drug addicts for 19 offenders. On 1 January 1997, 25 juvenile offenders were being subjected to the correctional measure of committal to a correctional centre (28 juvenile offenders on 31 December 1997).

166. On 1 January 1996, 16 persons were serving prison sentences pronounced within misdemeanour proceedings; the number of these persons on 1 January 1997 was 23, and on 31 December 1997, 20.

167. According to sources at the RS Ministry of Justice, there were 48 instances of the use of coercive means on detainees and convicts in 1996 - a gas sprayer was used once and a truncheon

three times. In 1997 coercive means were used 45 times - a gas sprayer was used once and a truncheon four times. The position of the Ministry of Justice is that all instances of the use of force were lawful (Source: MP RS).

168. In 1996, 246 disciplinary sanctions were pronounced for convicts and 60 disciplinary sanctions for minors in the correctional centre. In the same year, nine complaints were registered against pronounced disciplinary sanctions. In 1997 there were 225 disciplinary sanctions in total, and an additional 70 disciplinary sanctions for minors in the correctional centre. Eighteen convicts in total complained against pronounced disciplinary sanctions. (See appendices for statistical details and the report on the treatment of convicts.)

169. In its official position of 5 May 1998, the RS Ministry of Justice estimated that "the general conditions in institutions for the enforcement of prison sentences and in the juvenile detention centre (...) have been brought into compliance with international legal acts ratified by the Republic of Slovenia (...). National and international legislation, which can be accessed by all persons imprisoned in these institutions, is implemented for the most part consistently in practice" (Source: MP RS). According to the ministry's statements, "upon their admission to the institution or correctional centre all convicts are always informed of the rights and obligations they have during their sentence, of the method of exercising their rights, of the disciplinary sanctions that may be pronounced, and of the benefits they can enjoy" (Source: MP RS).

170. According to estimates by the RS Ministry of Justice, in the last five years there have been no major organized or spontaneous rebellions by persons imprisoned in institutions. One exception was the collective rebellion of minors in the Radeče Correctional Centre in early 1998. In this case, the special investigating commission at the RS Ministry of Justice determined that the rebellion was not instigated as a result of unlawful treatment by workers at the correctional centre, or as a result of possible torture within the meaning of the Convention against Torture. This event, however, attracted substantial media attention. (See the appendix to this report for the report by the said commission.)

171. In 1995 Slovenia was visited by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which compiled a report on its visit (see the appendix to this report). From this report it is clear that "the CPT delegation did not receive any complaints due to the torture of persons detained by the police", and that "the delegation did not find any evidence of such treatment during its visit", as well as that "the delegation did not receive any complaints due to torture nor did it collect any evidence on such treatment of convicts (...) that would be committed by staff in the institutions visited or in other institutions under the jurisdiction of the (RS) Ministry of Justice". The delegation did, however, draw attention to specific irregularities or circumstances which give rise for concern. Thus the report includes the conclusion that a number of persons claimed "that police officers used excessive force at arrests (primarily truncheon strikes)", and that during investigations they suffered "blows (slaps and punches)" from police investigators. It is also clear from the report that the medical staff notified the delegation of the Council of Europe that in 1995 traces of physical injury were found on 25 persons referred to health institutions from institutions for the

enforcement of prison sentences after police detention. In at least two cases, the Council of Europe delegation collected evidence demonstrating that the injuries suffered by the relevant persons were the result of excessive use of force.

172. In its report on the situation in Slovenia, the Council of Europe delegation drew particular attention to the very poor conditions in the detention premises at the Ljubljana Central Police Station, comparing the premises to a "dungeon". The delegation also drew attention to the fact that two convicts serving their prison sentence in Dob prison complained that prison staff beat them up; one of them was beaten up in May 1994 and the other in June 1994. The delegation claims that medical documentation exists which proves that these complaints were based on actual facts. In addition, the delegation particularly stressed and criticized the use of force on juvenile detainees in the Radeče Correctional Centre on 9 January 1995. When, on that day, a small group of minors refused to work and began to exhibit various types of destructive behaviour, seven guards of the special intervention group used force to confront them. The incident resulted in, as was confirmed after the investigation by the Ministry of Justice and reiterated by the delegation of the Council of Europe, the "premature and disproportionate use of force", including the "use of a truncheon (two strikes) against a minor even after the minor was clearly subdued", the use of a truncheon (one strike) against a minor during the investigation, although it was clear that the minor did not offer any resistance", and the use of a truncheon (two strikes) against a person who refused to get out of bed". In its report the delegation of the Council of Europe particularly stresses that in this matter "the minors were medically examined as late as the following day", quoting the medical findings of these examinations, which included bruises, and marks from blows and injuries suffered by six minors.

173. The Government of the Republic of Slovenia responded to the criticisms in the Council of Europe delegation's report by introducing various measures, which are described in a special written report (see the appendix to this report). Among other things, renovation was carried out of the entire detention premises at the Ljubljana Central Police Station, which were subject to the harshest criticisms by the Council of Europe delegation.

(c)

174. See the findings and criticisms by the RS Human Rights Ombudsman included in various chapters of this report for separate discussions of the problem of psychiatric treatment and the potential danger of torture within the meaning of the Convention against Torture.

(d)

175. Separate important discussions of issues relating to fighting threats of torture and other cruel, inhuman or degrading treatment or punishment within the meaning of the Convention against Torture can be found in the conclusions included in the most recent annual reports compiled by the Office of the Human Rights Ombudsman of the Republic of Slovenia and submitted to the National Assembly of the Republic of Slovenia (report for 1996 published in May 1997, and the accessible official material for 1997[42]). In these reports (Source: Human Rights Ombudsman of the RS[43]), the Human Rights Ombudsman states that the provision of

legal assistance for parties unfamiliar with legal issues in administrative proceedings, and the provision of parties with information on possibilities for appeal, are still not developed to a sufficient extent in Slovenia (pp. 14-15/1996).

176. In a special chapter of the 1996 report ("Restrictions on Personal Freedom"), the Human Rights Ombudsman dealt separately with the problem of detention. He maintained that Slovene judges issued rulings specifying less drastic measures for ensuring the presence of an accused person (particularly in relation to bail) with reluctance, resorting relatively hastily to the most drastic measure envisaged for this, i.e. detention (p. 32/1996). In addition, in some cases Slovene courts unnecessarily protracted the delivery of a ruling on detention to detained persons. The Human Rights Ombudsman drew attention to an instance of unreasonably long (two-year) detention in a specific case (p. 35/1996) and to a number of late written compilations of rulings with respect to detention cases, including cases of the disregard of appeals against these delays (p. 36/1996). He also quotes a case of an eight-month transgression of the legal time limit for compiling a written ruling, as well as a number of cases of presidents of courts failing to act despite the extremely long delays in compiling written rulings involving detention cases.

177. On page 37 of the 1996 report, in connection with conditions in detention premises in Slovenia, the Human Rights Ombudsman reported: "In Slovenia, detention premises are mostly located in separately-enclosed parts of institutions for the enforcement of prison sentences or in their units. Detention premises are often in the basement or semi-basement sections of old and poorly-insulated buildings. Many detainees must go through detention lasting several months or even several years in premises which are damp and which do not have sufficient daylight; these spartan premises have sanitary and physical hygiene equipment which hardly meets the minimum standards deemed acceptable for people at liberty. The premises are characterized by a lack of space, so that two or more detainees are often forced to reside together. Each of the detainees has his own bed, if only a bunk, while chairs and tables are frequently shared with other inmates. Poor ventilation (grids on usually small windows) results in poor air in the detention premises, particularly if there are more detainees in them. A special problem is caused by smoking. Despite our warnings, it appears that it has not yet been ensured that smokers and non-smokers are accommodated in separate premises in all detention institutions.[44] We are not surprised by many detainees' claims that their health is jeopardized in detention premises. The poor living conditions and psychological tensions resulting from prolonged isolation and protracted judicial proceedings often lead to mental trauma and even to extreme reactions, such as suicide attempts. There are also many complaints relating to poor medical and, in particular, psychiatric care, which in most cases offers drug treatment exclusively. This often leads to drug addiction and to an even worse mental and physical state of health. (...) "The Human Rights Ombudsman further draws attention to the fact that possibilities for the physical recreation of detainees are mostly confined to their detention cell"; he is particularly critical of the fact that outdoor recreation, as part of recreation under detention, is not ensured to a sufficient extent (p. 38/1996).

178. It appears appropriate to highlight here a specific issue which the Human Rights Ombudsman explicitly qualified as the "inhuman and degrading treatment of a detainee" (pp. 38-39/1996). The case involved the use of means for cuffing a detainee ("handcuffs" used on his legs) who was recuperating in hospital after a medical operation. The doctor in charge protested against this kind of treatment of the patient-detainee in the hospital several times,

contacting different responsible bodies, including the court, and claiming that this coerced cuffing of the patient hindered medical treatment and caused suffering. All his appeals were in vain.

179. On pp. 40-41 of the 1996 report, the Human Rights Ombudsman drew attention to the fact that none of the Slovene detention institutions observed the legal provisions which stipulate that defence counsels may talk to detainees at all times, while he also mentions "hesitations (...) regarding the granting of permission for visits by journalists" (p. 41/1996). The Human Rights Ombudsman (despite the concrete normative incompleteness of this issue) criticized a case where the court did not notify the relatives of a detainee, who then attempted to commit suicide and in so doing inflicted severe injuries on himself (p. 41/1996). He also criticized the "unreasonably long withholding of a detainee's mail at the court (10 days)". In addition, he stated that in specific cases judges even opened letters addressed to the Human Rights Ombudsman, which is in contravention of the Human Rights Ombudsman Act (p. 42/1996).

180. With respect to the treatment of prisoners (legally-convicted persons) in Slovene prisons, the Human Rights Ombudsman highlights the unsatisfactory level of psychological assistance in cases of mental distress (p. 46/1996) and in particular the fact that in 1996 five inmates committed suicide in Slovene prisons (of whom one was a detainee).[45] [46] [47]

181. The Human Rights Ombudsman's 1996 report also included criticism of discrimination against a prisoner in the exercise of his rights arising from health insurance in a specific case (the prisoner was denied hospitalization in a specialist health institution).

182. On page 48 of the 1996 report, the RS Human Rights Ombudsman criticized specific practice where the rights to unrestrained contact with a defence counsel of a detainee who at the same time was a prisoner were violated. The prison management wrongfully treated the detainee in accordance with the rules applying to prisoners, thus restricting his contact with a defence counsel and contravening the ZKP.

183. On the same page of the 1996 report, the Human Rights Ombudsman highlighted the modest possibilities in practice that prisoners have for movement out of doors. He also criticizes the fact that many prisoners are involuntarily exposed (which has been proved to be harmful) to cigarette smoke and passive smoking. This practice is in contravention to Slovene valid legislation governing the restriction of the use of tobacco products (p. 49/1996).

184. Here we must also place emphasis on the RS Human Rights Ombudsman's statement that the practice of placing minors in detention while waiting for admission to the correctional centre is impermissible (p. 50/1996).

185. On pages 52-55 of the 1996 annual report, the Human Rights Ombudsman extensively criticized legislation, as well as practice, and in particular the ineffective judicial supervision of forcibly-hospitalized psychiatric patients. He proposed that compulsory representation of this type of patient and other forms of free legal assistance be introduced, as these do not currently exist in Slovenia. The Human Rights Ombudsman warned that even modest legal regulation failed to be observed in practice. So, for example, the 48-hour time limit for notifying the court of the forced detention of a patient in a psychiatric health institution (in accordance with the

Non-Contentious Proceedings Act) was not abided by at all times. The situation was even worse regarding the legal time limits to be complied with by courts. "The Ljubljana District Court practically never visits persons detained in psychiatric hospitals within the legally-prescribed time limit (...)" (p. 54/1996).

186. The Human Rights Ombudsman continued his criticisms regarding the observation of the rights of psychiatric patients in Slovenia in 1997. In a special report on the visit to the Ormož Psychiatric Hospital public health institution carried out on 16 December 1997, the Human Rights Ombudsman stressed the problem of overcrowded rooms, particularly in enclosed departmental sections. He also drew special attention to the competent court's practice, where in recent years the court has failed to complete any detention proceedings case by adopting a decision (issuing of a resolution) that a detained person should either continue to be detained or be released. In particular, the judge of the competent court failed to visit detained persons as specified in the valid Non-Contentious Proceedings Act (article 74) or to carry out any procedural action on the basis of a received notification on detention, even when this detention was longer than usual. Detained persons were visited by the judge only in the event of a complaint, where the Human Rights Ombudsman found this to be contra legem and a reason for serious concern in a State governed by the rule of law. In his separate opinion, the Human Rights Ombudsman in 1997 wrote that "judicial control of hospitalization in the enclosed departmental sections of the Ormož Psychiatric Hospital (...) is not exercised in accordance with valid regulations", or that legally-prescribed judicial control "practically does not exist" (Source: 1997 Special Report).

187. In the other special reports for 1997, the Human Rights Ombudsman quoted cases 2.3-1/97, 2.3-6/97 and 2.3/96, criticizing a similarly unlawful practice which took place in Ljubljana (Ljubljana-Polje Psychiatric Clinic, competent court) (Source: special reports for 1997).

188. The Human Rights Ombudsman of the RS warned that in a specific case in 1996, the police handcuffed a suspect at his home, but officially claimed that the suspect was deprived of his liberty three hours later at the police station. In so doing, the police violated the legally-permissible time limit for detention of 48 hours (p. 122/1996). In 1996 the Human Rights Ombudsman also discussed the detention of a minor twice in a row, when the length of deprivation of liberty was effectively 96 hours without interruption (p. 123/1996). The Human Rights Ombudsman particularly stressed that improper and unlawful practices on the part of police officers was often inadequately and insufficiently-strictly sanctioned in formal terms (p. 123/1996). He also highlighted blatant cases of the police wrongfully referring to consent given by suspects (e g. to polygraph testing). (See p. 124 of the 1996 annual report.)

189. In the special report for 1997, the Human Rights Ombudsman drew attention to a case (6.1.17/97) of the unlawful deprivation of liberty and of a number of other errors made by a police officer from Koper police station. The police officer delivered a verbal summons to a suspect to attend the police station, which meant that the police officer, without good cause, transported the suspect to the station in the enclosed section of the official police vehicle; he also kept the suspect for an excessively long time in this section, and he failed to instruct the suspect of his rights in accordance with the ZKP (Source: 1997 Special Report).

190. The Human Rights Ombudsman also discovered a number of procedural irregularities during an informative conversation at the Ljubljana Central Police Station with reference to case No. 6.1-14/96 (Source: 1997 Special Report).

(e)

191. Among the legally valid rulings relevant to the definition of torture specified in the Convention against Torture, there have been few serious cases in the last five years. One exception is the relatively infamous ruling which was passed in 1996 and which received extensive media attention. The case involved the criminal offence of the violation of human dignity by abuse of office or official duties according to article 270 of the KZRS. In its ruling No. Kp 391/96 (on the basis of an appeal against the ruling in the first instance), the Ljubljana Higher Court found H.Z., a police officer at the Crime-Fighting Unit of the Ljubljana Internal Affairs Administration, guilty. The police officer had been charged with acting intentionally in contravention to the valid instructions on the use of coercive means during the arrest procedure, inflicting light bodily harm on the arrested person and exhibiting generally exceptionally brutal behaviour during the arrest. As a result, the court ruled a suspended sentence of four months in prison with a probation period of two years for H.Z. (see the appendix to this report for the full text of this ruling).

192. In addition, two more rulings (K 23/95 and Kp 901/96) deserve mention. B.J., a police officer at Jesenice police station, was found guilty of committing the criminal offence of violation of human dignity by abuse of office or official duties pursuant to article 270 of the KZRS, and at the same time of inflicting extremely severe injuries pursuant to article 135/I. While exercising traffic control, the accused officer acted brutally against the driver of a personal vehicle, and severely damaged one of the driver's eyes by using his foot. The court ruled a suspended prison sentence for B.J. (see the appendix to this report for the full text of this ruling).

(f)

193. In addition to Amnesty International, the following officially registered non-governmental organizations in the Republic of Slovenia are the most active and influential organizations monitoring compliance with the prohibition of torture within the meaning of the Convention against Torture: the Association for Developing Preventive and Voluntary Work, the Helsinki Monitor, Labeco, Retina Ljubljana, REC, the Centre for Assisting Young People, the "Project Man" Association, the SOS Telephone Hotline Association, Stigma (Stigma Association), the Peace Institute, the Youth Guild, OZARA (Association for Quality of Life), KUD (Exiles Project), the Most Association, KOMISP (the umbrella organization of international professional student associations), the Informal Association of Same-Sex Persons, the Agency for Developmental Initiatives, the "N'č posebnega ali nočna mora" Association, the SOS telephone hotline, the Women's Advice Office, the Altra Association, Šent (Organization for Mental Health), Umanotera (Slovene Foundation for Sustainable Development), the Federation of Young Slovenes Living in Rural Areas, the Handicap Theory and Culture Association, the Federation of Friends of Young People, SEZAM (Association of Parents and Children), the "Živozeleni" Association, the "Jernejeva Pravica" Association, the Women's Forum, the Slovene Foundation, UNICEF (the Slovene UNICEF Committee), the Non-Violent

Communication Association, Karitas of Slovenia, Autonomous Women's Groups, the Centre for Psycho-Social Aid for Refugees, the Quality of Life Association, and the Civil Society for Democracy.[48]

4.

194. Since ratifying the Convention against Torture in 1993, Slovenia has not declared a state of war or a state of emergency within the meaning of article 16 of the Constitution of the Republic of Slovenia, or article 5/I (4) and (5) of the Defence Act, nor has it experienced any serious internal political instability or any other similar state of emergency within the meaning of article 2/II of the Convention against Torture.

195. As has already been explained briefly (Introduction, C.), the prohibition of torture and inhuman or degrading treatment or punishment is set out as a general prohibition by article 18 of the Constitution of the Republic of Slovenia, where the explicit provision of article 16/II permits no temporary revocation or restriction. This obligation also arises from the provision of article 2 of the Ratification of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Act, which entered into force on 29 May 1993.

196. In the five-year period under discussion, the Republic of Slovenia (its legislative, executive and judicial bodies) has never referred to emergency circumstances to justify any type of torture (i.e. declare its compliance with the Slovene legal system, i.e. declare it to be "not unlawful") within the meaning of the Convention against Torture, and in particular any torture under national jurisdiction of the Republic of Slovenia. In the five-year period under discussion there have been no known cases in which the perpetrators of torture or other cruel, inhuman or degrading treatment or punishment would, in any type of legal proceedings, refer to circumstances that would exclude the unlawfulness of their action, such as: references to provisions governing self-defence; action as last resort; use of force under threat; use of force with the victim's consent, etc.

197. Although both theory and practice do not exclude the possibility that the perpetrator may be forced to torture other people within the meaning of article 1/I of the Convention against Torture in order to protect his own life against a threat posed by a third person, and that according to the standards applying to the use of force as a last resort and under appropriate circumstances this could not be unlawful in accordance with Slovene criminal law, Slovenia has hitherto not encountered this type of case.

5.

198. The provision of article 283 of the KZRS (chapter 27, entitled "Criminal Offences against Military Duty") deals with the general criminal liability of military subordinates who fail to execute an order by their superiors. The provision reads: "A member of the military who commits a criminal offence upon an order or command given by his superior, where this order or command is related to military duty, shall not be liable for committing such an offence, unless the offence constitutes a war crime or any other severe criminal offence or if he was aware that the execution of a particular order or command constituted a criminal offence".

199. The provision of article 43/VIII of the Defence Act concretizes the above provision of the KZRS as follows: "No one may issue, nor shall anyone be obliged to execute, an order if it is clear that this would result in a criminal offence or the violation of provisions of international military law".

200. According to the Rules of Service in the Slovene Armed Forces (point 53/IV), "in accordance with law a military person may not execute an order which is in contravention with international military law or if it is clear that the execution of the order would result in a criminal offence". Military persons must refuse to execute such an order and, as soon as possible, notify the superior of the person who issued this order. The military person who issued such an order may not prevent such notification of a superior. The superior who received such notification must notify his superior headquarters, which in turn must notify the General Headquarters of the Slovene Armed Forces" (ibidem).[49]

201. According to the general rules of the ZKP, any person, which therefore includes military persons, may report a criminal offence directly to the responsible national (civil) bodies, i.e. a criminal offence which is liable to public prosecution (article 146/I of the ZKP). Under articles 285 and 286 of the KZRS, military persons may even be liable for committing a criminal offence if, under certain conditions, they fail to report that a specific criminal offence has been committed, or even if a criminal offence is planned to be committed (including criminal offences committed or planned to be committed by military superiors).[50]

202. Criminal liability acting upon an order issued by a superior outside the military (in other public-law hierarchical institutions) is not separately regulated by Slovene positive criminal law. However, most Slovene criminal law theory stresses that,[51] in such instances of orders, conditions for the unlawfulness of the execution of the order would in principle be valid, where only the liability of the subordinate could be excluded using the criterion of legal error (see the provision of article 21/I of the KZRS[52]).

Article 3

1.

203. In accordance with the Slovene legal system, foreign persons are permitted to be expelled as part of certain proceedings: misdemeanours proceedings (in the form of the security measure of the removal of a foreign person pursuant to article 40 of the Misdemeanours Act) or criminal proceedings (in the form of the sentence of the deportation of a foreign person pursuant to article 40 of the KZRS). In both cases, expulsion is carried out by force on the basis of articles 27 and 28 of the Foreign Persons Act if the foreign person, after the pronouncement of a measure of removal or deportation, fails to leave the country voluntarily within the prescribed time limit.

204. Another possibility is the administrative cancellation of a foreign person's temporary or permanent residence in Slovenia, which may also eventually result in the forced removal of that foreign person from the country. This measure is set out in articles 23 and 24[53] of the Foreign

Persons Act, and falls within the jurisdiction of responsible administrative bodies.[54] The measure of cancellation of residence may not be shorter than six months or longer than five years (article 25/III of the Foreign Persons Act).

205. In the widest sense, all general possibilities for appeal may be exercised against court or misdemeanours judge decisions involving sanctions of expulsion pronounced within criminal and misdemeanours proceedings, including an appeal against the type and severity of the pronounced criminal sanction.[55] The administrative procedure in the Foreign Persons Act in relation to the cancellation of residence envisages a special possibility for appeal: "The decision on the cancellation of a foreign person's residence shall be issued by the responsible body in whose area the foreign person resides or has a registered temporary residence permit, or by the national administrative body responsible for internal affairs in the event of the cancellation of a foreign person's permanent residence. In making the decision on cancellation, the body shall take into account the length of stay of the foreign person in the country, his personal, economic and other ties with the Republic of Slovenia, and the consequences which the foreign person and his family would suffer as a result of the cancellation. (...) In assessing how long the foreign person should be banned from entering the country, the body which issues the decision on the cancellation of residence shall take into account the gravity of the committed misdemeanour or criminal offence, as well as other circumstances for which residence of the foreign person is undesired. (...) The foreign person may appeal against (this) decision within three days. Appeals by foreign persons who have resided in the Republic of Slovenia in accordance with the first paragraph of article 13 of this Act (entry in the RS on the basis of a valid passport or visa) or on the basis of a permit for temporary residence shall not stay the execution of the decision".

206. As is the case in principle in all administrative proceedings, judicial protection is also permitted here. Under the Administrative Disputes Act, the responsibility for such protection is the administrative court in this instance as well.[56]

207. In all cases described above, irrespective of the nationality of the appellant, it is possible to file a constitutional appeal in accordance with the general rules of the Constitutional Court Act (see below the report on the implementation of article 13 of the Convention against Torture for details).

208. A special criminal procedure for the extradition of an accused and convicted person from Slovenia to a foreign country is set out in chapter XXXI of the ZKP (see below). If an international treaty to which the RS is bound prescribes a special procedure, article 521 stipulates that the procedure described in this international treaty shall apply.

209. The provision of article 33 of the Foreign Persons Act applies to all the cases described above: "The forced extradition of a foreign person to a country in which his life would be threatened because of racial, religious or national prejudice, or political persuasion, or if there is a danger that once extradited the foreign person would be subjected to torture, inhuman or degrading treatment, shall not be permitted". In addition to this provision, as already mentioned, the provision of article 3 of the Convention against Torture and all other relevant provisions of ratified international treaties apply directly.

2.

210. A separate chapter of the Criminal Procedure Act entitled "Proceedings for the Extradition of Accused and Convicted Persons" (chapter XXXI) permits, in principle, the extradition of a foreign person to another country, while it also sets out (article 530/II) that the Minister of Justice may refuse to extradite a foreign person if this person is granted the right to refuge in the Republic of Slovenia, or if a political or military criminal offence is in question. He may also refuse extradition in all cases involving criminal offences for which Slovene law prescribes prison sentences of up to three years, or if a foreign court has pronounced the sentence of deprivation of liberty for up to one year. Under the provision of article 531 of the ZKP, in the decision on the extradition of a foreign person the RS Minister of Justice must specify that the foreign person to be extradited may not be prosecuted for some other criminal offence; that no sentence for some other criminal offence committed prior to the extradition may be implemented; that no severer sentence may be imposed on him than that pronounced for the committed offence; and that he may not be extradited to a third country to be prosecuted for a criminal offence which he committed before extradition was permitted. In addition to these conditions, the Minister of Justice may lay down other conditions for extradition (article 531/II).[57]

211. The Republic of Slovenia is also bound by various international multilateral and bilateral agreements (see the appendix for a list), which impose specific restrictions regarding the extradition of foreign persons and set out the extradition procedure in detail.

212. The responsible national judicial and executive bodies observe all relevant international treaties that bind the Republic of Slovenia in all expulsion procedures. As for the danger of the person to be expelled being subjected to torture within the meaning of article 3 of the Convention against Torture, the RS Ministry of Foreign Affairs must give its opinion on all cases. In the procedure of investigating this danger, the responsible service at the RS Ministry of Foreign Affairs must, in confidentiality, obtain the opinions of Slovene consular/diplomatic representative offices based abroad, and must take into account all other available information on the current state of protection accorded to human rights in the country to which an individual is to be expelled in a specific case. On the basis of this information, the RS Ministry of Foreign Affairs compiles a written report on a specific case and submits this report to the body responsible for deciding on the extradition in question.

3.

Statistics and specific features in practice

213. In 1996 the total number of convicts admitted to institutions for the enforcement of prison sentences in the Republic of Slovenia included 80 foreign persons for whom the subsidiary sentence of expulsion from the country was pronounced as part of criminal proceedings; in 1997 the number of such convicts/foreign persons was 56.

Article 4

1.

214. With respect to liability for attempts to commit individual criminal offences involving torture in the widest meaning of the word, we include the basic data obtained by reviewing incriminations set out in the positive criminal law of the Republic of Slovenia (see the report on the implementation of article 1 of the Convention against Torture above). For the purpose of drawing as complete a picture as possible of how Slovene criminal law addresses liability for criminal attempts, the following sections of the report set out in detail the general regulation of liability for criminal attempts according to the KZRS.

215. In the chapter of the KZRS entitled "Criminal Attempt", the following definitions can be found: "(I) Anybody who intentionally initiated a criminal offence but did not complete it shall be punished for the criminal attempt, provided that such an attempt involved a criminal offence for which a sentence of three years' imprisonment or a heavier sentence may be imposed under the statute; attempts involving any other criminal offence shall be punishable only when so expressly stipulated by the statute. (II) Against a perpetrator who attempted to commit a criminal offence, the sentence shall be applied within the limits prescribed for such an offence, or it shall be reduced as the case may be" (article 22 of the KZRS). And further: "If the perpetrator has attempted to commit a criminal offence by inappropriate means or to damage an inappropriate object, his sentence may be withdrawn" (article 23 of the KZRS).

216. Article 25 of the KZRS defines complicity: "If two or more persons are engaged jointly in the commission of a criminal offence by collaborating in the execution thereof or by the performance of any act representing a decisive part of the commission of the offence in question, each of these persons shall be punished according to the limits set down in the statute for the offence in question."

217. Article 26 of the KZRS defines criminal solicitation: "(I) Anybody who intentionally solicits another person to commit a criminal offence shall be punished as if he himself had committed it. (II) Anybody who intentionally solicits another person to commit a criminal offence for which a sentence of three years' imprisonment or a heavier sentence may be imposed under the statute shall be punished for the criminal attempt even if the commission of such an offence was never attempted."

218. Article 27 of the KZRS defines criminal support: "(I) Any person who intentionally supports another person in the commission of a criminal offence shall be punished as if he himself had committed it, or his sentence shall be reduced as the case may be. (II) Support in the commission of a criminal offence shall be deemed to be constituted, in the main, by the following: advising or instructing the perpetrator on how to carry out the offence; providing the perpetrator with instruments of crime; the removal of obstacles for the commission of crime; a priori promises to conceal the crime or any traces thereof; concealment of the perpetrator, instruments of crime or objects gained through the commission of crime."

219. Criminal liability for solicitation and support is also separately defined in article 28 of the KZRS ("if the perpetration of a criminal offence falls short of the intended consequence, those

soliciting or supporting the criminal attempt shall be punished according to the prescriptions that apply to the criminal attempt"), while article 29 of the KZRS additionally sets out the limits of the criminal liability and punishability of participants in crime: "(I) The accomplice in crime shall be liable within the limits of his intent or negligence as the case may be, while those soliciting and supporting are liable within the limits of their respective intents. (II) If the accomplice, the person soliciting or the person supporting the criminal attempt has voluntarily prevented the intended criminal offence from being accomplished, his sentence may be withdrawn. (III) Personal relations, attributes and circumstances on the basis of which criminal liability is excluded or sentence withdrawn, reduced or extended shall be taken into consideration only with respect to the accomplice, the person soliciting or the person supporting the criminal attempt in whom such relations, attributes and circumstances inhere."

220. To determine whether it is possible to qualify an action of an accused person in law as a non-punishable preparatory action, whether an action of the accused shows signs of torture but falls short of generating the prohibited consequences (severe human pain and suffering within the meaning of article 1/I of the Convention against Torture) or, in the event of torture, what constitutes the beginning of execution of signs of individual incriminations within Slovene positive criminal law will, by all means, depend on individual legal definitions and the concrete circumstances of a particular case, and chiefly on the perpetrator's intent. Slovene criminal law theory and judicial practice uniformly stress the importance of objective criteria for determining the gravity of a specific contribution to an offence. This may include the preparation of implements of torture, the placing of electrodes on a person's body, stripping a person, tying and positioning a person and so on - all with the aim of shortly or in the near future implementing torture. It is stipulated that this action, in essence still merely preparatory, inflicts severe (primarily mental) pain and suffering on the victim and therefore objectively constitutes finalized torture within the meaning of the commission of various criminal offences against limb set out in the KZRS. In Slovenia those who are not aware that by preparing implements of torture or carrying out other preparations for torture they inflict severe (mental) pain or severe (mental) suffering on other persons cannot be deemed liable for an intentional criminal offence against limb.

221. In Slovenia the agreement of two or more persons to commit a criminal offence – even criminal torture within the meaning of article 1/I of the Convention – is not deemed in itself to constitute an agreed criminal offence, irrespective of the level of formality of such an agreement. It may, however, develop into an independent criminal offence in accordance with article 298 of the KZRS ("whoever agrees to commit a criminal offence with another for which a punishment exceeding five years' imprisonment may be imposed").[58] This criminal offence is prosecuted ex officio.

2.

222. The sentences prescribed for the officially-prosecutable criminal offences which are discussed in this report and which, according to Slovene criminal legislation, are relevant to cases involving torture and other cruel, inhuman or degrading treatment or punishment are as follows: article 134/I of the KZRS (aggravated bodily harm) – imprisonment of between six months and five years; article 135/I of the KZRS (grievous bodily harm) – imprisonment of

between 1 and 10 years; article 141/III of the KZRS (qualified violation of the right to equality) – imprisonment of up to three years; article 143/II of the KZRS (qualified false imprisonment) – imprisonment of up to three years, imprisonment of between three months and five years; article 147/II of the KZRS (qualified unlawful search of a person) – imprisonment of up to two years; article 152/III of the KZRS (qualified criminal trespass) – imprisonment of up to two years; article 261/I of the KZRS (abuse of office or official duties) – imprisonment of up to one year; articles 261/II, 261/III, 261/IV of the KZRS (various qualified forms of abuse of office or official duties) – imprisonment of up to three years, imprisonment of between three months and five years, imprisonment of between one and eight years; article 270 of the KZRS (violation of human dignity by abuse of office or official duties) – imprisonment of up to three years; article 271/II of the KZRS (extortion of statement) – imprisonment of between three months and five years; article 271/II of the KZRS (qualified extortion of statement) – imprisonment of between one and eight years; article 278/II of the KZRS (maltreatment of a subordinate) – imprisonment of up to three years; article 278/II of the KZRS (qualified maltreatment of a subordinate) – imprisonment of up to five years; article 180/II of the KZRS (qualified rape) – imprisonment of between 3 and 15 years; article 181/II of the KZRS (qualified sexual violence) – imprisonment of between 3 and 15 years; article 127/II of the KZRS (qualified murder) – imprisonment of between 10 and 20 years. The KZRS, as a rule, prescribes the maximum prison sentences for criminal offences committed against humanity and international law.

Article 5

223. The KZRS contains a special chapter within the general section (chapter 13) entitled "Applicability of the Penal Code". The chapter sets the criteria for the applicability of penal legislation in cases including international elements. The full text of the provisions of this chapter read as follows:

224. Applicability to Persons for Criminal Offences Committed in the Republic of Slovenia (article 120). (I) The Penal Code of the Republic of Slovenia shall apply to any person who commits a criminal offence in the territory of the Republic of Slovenia. (II) The Penal Code of the Republic of Slovenia shall also apply to any person who commits a criminal offence on a domestic vessel irrespective of its location at the time the offence was committed. (III) The Penal Code of the Republic of Slovenia shall apply to any person who commits a criminal offence either on a domestic civil aircraft in flight or on a domestic military aircraft irrespective of its location at the time the offence was committed.

225. Applicability to Persons for Specific Offences Committed Abroad (article 121). The present Code shall apply to any person who, in a foreign country, commits either the criminal offence under article 249 of the present Code referring to domestic currency or any of the criminal offences under articles 348-362 of the present Code.

226. Applicability to Citizens of the Republic of Slovenia for Criminal Offences Committed Abroad (article 122). The Penal Code of the Republic of Slovenia shall be applicable to any citizen of the Republic of Slovenia who commits any criminal offence abroad, other than those specified in the preceding article, and who has been apprehended in or extradited to the Republic of Slovenia.

227. Applicability to Foreign Citizens for Criminal Offences Committed Abroad (article 123). (I) The Penal Code of the Republic of Slovenia shall apply to any foreign citizen who has, in a foreign country, committed a criminal offence against the Republic of Slovenia or any of its citizens and who has been apprehended in the territory of the Republic of Slovenia or has been extradited, even though the offences in question are not covered by article 121 of the present Code. (II) The Penal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens and has been apprehended in or extradited to the Republic of Slovenia, provided the offence concerned is punishable by a prison sentence of at least three years according to the present Code. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country in which the offence was committed.

228. Special Conditions for Prosecution (article 124). (I) If, in cases under article 120 of the present Code, the criminal procedure has been initiated or discontinued in a foreign country, the perpetrator may be prosecuted in the Republic of Slovenia only with the permission of the RS Ministry of Justice. (II) In cases under articles 122 and 123 of the present Code, the perpetrator shall not be prosecuted: (1) if he has served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in the Republic of Slovenia; (2) if he has been acquitted by a foreign court or if his sentence has been remitted or the execution of the sentence has fallen under the statute of limitations; (3) if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed. (III) In cases under articles 122 and 123, the perpetrator shall be prosecuted only insofar as his conduct constitutes a criminal offence in the country where it was committed. (IV) If, in the case under article 122, the criminal offence committed against the Republic of Slovenia or a citizen thereof does not constitute a criminal offence under the law of the country in which it was committed, the perpetrator of such an offence may be prosecuted only with the permission of the RS Ministry of Justice. (V) If, in the case under the preceding article, the criminal offence is not punished in the country where it was committed, the perpetrator may be prosecuted only with the permission of the RS Ministry of Justice and with the proviso that, according to the general principles of law recognized by the international community, the offence in question constituted a criminal act at the time it was committed. (VI) In the case under article 120, the prosecution of a foreign person may be transferred to another country under conditions provided by the statute.

229. Credit for Detention and Sentence Served Abroad (article 125). Any period of detention, confinement during the extradition procedure or sentence of imprisonment served under the judgement of a foreign court shall be credited towards the sentence imposed for the same criminal offence by the domestic court. If a different type of sentence is imposed on a perpetrator by the domestic court, the latter shall decide on the appropriate method of deduction of the period served abroad.

230. Because of the legal frameworks (particularly those provided by substantive and procedural criminal law) in the Republic of Slovenia and because of a specific interpretation of international law, acts of torture within the meaning of the Convention against Torture are, by their very nature, in accordance with the "general legal principles recognized by the international community" within the meaning of the provisions of the KZRS cited above.

Articles 6-8

231. As has been shown in the report on the implementation of article 5 of the Convention against Torture (see above), valid Slovene legislation provides for the prosecution of all perpetrators charged with committing torture within the meaning of the Convention against Torture - both suspects who are Slovene citizens and foreign suspects. In all criminal and misdemeanours proceedings, Slovene suspects are, in principle, subject to the same procedural rules as foreign suspects, except for the rules on the right of a foreign person to contact representatives of diplomatic/consular services from the foreign person's country of origin (see the ZKP and the ZIKS). Both Slovene suspects and foreign suspects have the right to an interpreter.

232. As explained in the report on the implementation of article 3 of the Convention against Torture (see above), foreign persons suspected of committing the criminal offence of torture are permitted to be extradited to a foreign country in accordance with a special legal (judicial) procedure. Articles 526, 534 and 527-530 of the ZKP set out the status of a foreign person in the procedure of adopting a decision on extradition in relation to criminal offence cases. Clearly, charges of the criminal offence of torture do not constitute a reservation for extradition here, while, as mentioned in article 33 of the Foreign Persons Act, the threat of torture by a suspect abroad is an a priori reservation for extradition even in cases where the suspect himself is under suspicion of having committed the criminal offence of torture.

233. The procedure of a foreign person's extradition to a foreign country must take into account all provisions of relevant international treaties binding on Slovenia and applying to a concrete case.

234. The Republic of Slovenia has ratified (and, in accordance with regulations, published) a number of international conventions and multilateral international treaties in the area of international legal assistance in the wider meaning of the term. The texts of these treaties set out in detail the procedure of international assistance to and the specific special rights of accused foreign persons (see appendices). As a member of the Council of Europe, the Republic of Slovenia is bound to comply with the judicature of the Commission and the Court of Human Rights in this area.

235. Special attention needs to be drawn to specific bilateral agreements which additionally bind the Republic of Slovenia (for example, extradition agreements which the Republic of Slovenia has signed with Spain, Austria, Germany, Croatia, etc.). See appendix for details.

236. Finally, Slovenia is not a signatory to any international treaty which would deem criminal offences involving torture to be non-extraditable.

237. (See also the reports on the implementation of other articles of the Convention against Torture (in particular, the reports on articles 2, 4, 9, 11 and 12) for details on the procedure of international legal assistance in the wider sense, as well as for details on criminal proceedings against foreign defendants.)

Article 9

238. The Criminal Procedure Act contains a separate chapter (chapter XXX) entitled "Procedures for international legal aid and the execution of international agreements on matters of penal law". The full text of the provisions of the first part of this chapter, dealing separately with international legal aid with respect to criminal law, reads as follows:

239. Article 514. International aid in criminal matters shall be administered pursuant to the provisions of the present Code, unless provided otherwise by international agreements.

240. Article 515. (I) Petitions by domestic courts for legal aid in criminal matters shall be transmitted to foreign agencies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner. (II) In urgent cases, petitions for legal aid may be transmitted via the Ministry of the Interior, provided reciprocity exists.

241. Article 516. (I) The Ministry of Foreign Affairs shall send petitions for legal aid received from foreign agencies to the Ministry of Justice, which shall forward them for consideration to the circuit court in whose territory the person who should be served with a document, interrogated or confronted, or in whose territory an investigative act should be conducted, resides. (II) In instances referred to in the second paragraph of article 515 of the present Code, petitions shall be transmitted to the court by the Ministry of the Interior. (III) The permissibility and manner of performance of an act requested by a foreign agency shall be decided by the court pursuant to domestic regulations. (IV) If a petition relates to a criminal offence for which no extradition is provided by domestic regulations, the court shall consult the Ministry of Justice as to whether or not to grant the request.

242. Article 517. (I) Domestic courts may grant the request of a foreign agency for the execution of a conviction passed by a foreign court, if so provided by the international agreement or if reciprocity exists. (II) In the instance referred to in the preceding paragraph, the domestic court shall execute punishment imposed by the final judgement of a foreign court by imposing sanctions in accordance with the legislation of the Republic of Slovenia. (III) The court of jurisdiction shall pass judgement in the panel of judges referred to in the sixth paragraph of article 25 of the present Code. The state prosecutor and defence counsel shall be informed of the session of the panel. (IV) The territorial jurisdiction of the court shall be determined according to the last permanent residence of the convicted person in the Republic of Slovenia. If the convicted person had no permanent residence in the Republic of Slovenia, territorial jurisdiction shall be determined according to his place of birth. If a convicted person neither had permanent residence nor was born in the Republic of Slovenia, the Supreme Court shall assign the conduct of proceedings to one of the courts of real jurisdiction. (V) In the enacting terms of the judgement from the third paragraph of this article, the court shall enter in full the enacting terms of the judgement of the foreign court and the name of the foreign court, and shall pronounce a sanction. In the statement of reasons, the court shall state the grounds for the sanction which it has passed. (VI) An appeal may be lodged against a judgement by the state prosecutor, the convicted person and his defence counsel. (VII) If a foreign person sentenced by a domestic

court, or a person authorized under a contract, files with the court of first instance a petition for him to serve the sentence in his own country, the court shall be entitled to grant the petition, if so provided by the international agreement or if reciprocity exists.

243. Article 518. In the case of the criminal offences of counterfeiting money and of putting it into circulation, the illicit production, processing and sale of narcotics and poisons, the white slave trade, the production and dissemination of pornographic material, or some other criminal offence for which centralization of data has been provided under international agreements, the agency which conducts criminal proceedings shall be bound immediately to send to the Ministry of the Interior data relating to the criminal offence and its perpetrator, and the court of first instance shall, in addition, send the finally-binding judgement.

244. Article 519. (I) If a foreign person who permanently resides in a foreign country commits a criminal offence in the territory of the Republic of Slovenia, all files for criminal prosecution and adjudication may, notwithstanding the conditions specified in article 522 of the present Code, be surrendered to the foreign country if it agrees to receive them. (II) The decision on the surrendering of files shall, before the ruling on investigation has been rendered, lie with the competent state prosecutor. During the investigation the surrender shall be decided by the investigating judge upon the motion of the state prosecutor, and until the opening of the main hearing it shall be decided by the panel (sixth paragraph, article 25), which shall also handle matters from the jurisdiction of the district court. (III) The surrendering of criminal files may be allowed where criminal offences punishable by up to 10 years' imprisonment are involved, as well as in the case of criminal offences against the safety of public transport. (IV) The surrendering of criminal files shall not be allowed if the injured party is a citizen of the Republic of Slovenia who opposes it, except where his indemnification claim has been secured.
(V) If the defendant is on remand, the foreign country shall be requested, through the shortest possible channels, to report within 15 days on whether it assumes prosecution."[59]

Article 10

245. Since, in accordance with general education legislation (article 2 of the Financing of Schooling and Education Act), the provisions on the objectives of schooling and education in Slovenia explicitly refer to "education for respecting children's and human rights and basic freedoms" (indent 2), the Slovene education authority and all other entities involved in educational relations are obliged to do everything in their power to include teaching content aimed at pursuing this objective in curricula, and in the everyday implementation of schooling and education.

246. A special duty to inform people of the prohibition of violations of human rights can also be found in the provision of point 20 of the Rules of Service in the Slovene Armed Forces, according to which "military persons must be informed of the military rules of service immediately upon their appointment to military service positions".

247. Criminal substantive law, criminal procedural law and international public law (including international military and humanitarian law) are compulsory teaching subjects within undergraduate law studies at faculties of law in Slovenia. Misdemeanour law, international criminal law, European law, international organizations and similar subjects of study are either

compulsory or optional compulsory subjects at faculties of law in Slovenia. Teaching content on human rights is an essential constituent part of practically all subjects taught by these faculties. This material is also on the reading list for examination papers.

248. The teaching programme of the Police and Security Higher School, which is an associate member of the University of Ljubljana, covers content on human rights, forming an essential part of at least the following subjects: constitutional law, criminal law, criminal procedural law, administrative procedure and administrative dispute, international law, police authorizations, the normative regulation of private security, supervision of the operation of the state administration and administrative ethics, the personal status of an individual, the theory of police work, border problems and foreign persons. Students at this school are systematically acquainted with the provisions of the main chapters of international legal acts in the area of the protection of human rights. This material is also on the reading list for examination papers.

249. Students, cadets and all other police officers are separately acquainted with the Police Code of Ethics.

250. The beginnings of the Police Code of Ethics, or the idea for formulating this document, date from before the democratic changes which took place in Slovenia. The Code was later determined as the major objective of the Proposal for the Macro-Organization of Internal Affairs Agencies (December 1991).

251. The Police Code of Ethics contains general and fundamental principles, sets out mutual relations between authorized officials of internal affairs agencies in the Republic of Slovenia and their relations with citizens, institutions and bodies, and defines liability for violations of the Code. The Code observes the provisions of international conventions, declarations and moral-ethical police standards. It was adopted in September 1992.

Article 11

1.

252. Slovene legislation incorporates a number of provisions introduced to facilitate the systematic supervision of the rules, instructions, methods and practice of interrogation, of guarding arrested, detained and imprisoned persons, and of the treatment of these persons in general. These provisions are implemented by special inspection services and by obligatory periodical field supervisions exercised by these or other services, by various ex officio competencies vested in different services, obligatory reports which must be submitted to superior and competent services, and so on.

253. For example, the Criminal Procedure Act contains a special provision according to which an internal affairs agency which has detained or restricted the movement of a specific person (article 148 of the ZKP - see above for details, under II) must send a special report on these measures to the state prosecutor "even if the information gathered provides no basis for a crime report" (article 148/VII). This involves an important instrument for restricting the (excessive) use of these measures and, at the same time, for supervising these measures.

254. Under article 6/II of the Internal Affairs Act, an "internal affairs agency director who has been informed that an internal affairs agency worker has done something in contravention to his duty or failed to do something in line with his duty (...) must, within 30 days, notify the person who informed him of this of what action he has taken in connection with this". This is a special form of legally-regulated and comprehensive public supervision of the operation of internal affairs agencies (particularly of the police force).[60]

255. In accordance with the Rules on the Exercise of the Authorizations of Authorized Officials of Internal Affairs Agencies, the lawfulness of all police detentions ex officio is supervised by police unit chiefs. Under the same rules, the officer on duty in a police station must continuously monitor detained persons (via acoustic or optical systems, or directly) and is obliged to prevent any attempt by a detained person to inflict an injury on himself or an attempt by a third person to harm a detainee unlawfully.

256. If a foreign person is detained in Slovenia, the Rules on the Exercise of the Authorizations of Authorized Officials of Internal Affairs Agencies specify that these authorized officials must, via the RS Ministry of the Interior or if necessary the RS Ministry of Foreign Affairs, immediately notify the relevant diplomatic/consular representative office. This is an additional method of facilitating supervision of the lawfulness of deprivations of liberty.

257. Under the provision of article 525/II of the ZKP, in the event of the detention of a foreign person "the internal affairs agency shall, without delay, bring the arrested foreign person before the investigating judge of the court with jurisdiction for interrogation". The following provision of the same paragraph is particularly interesting: "If the investigating judge orders the remand in custody of the foreign person, the investigating judge shall inform the Ministry of the Interior thereof". This is a form of additional official supervision of the exercise of the foreign person's right to freedom in Slovenia.

258. Under the provision of article 200/II of the ZKP, "remand in custody shall last the shortest possible time. All agencies participating in criminal proceedings and agencies which provide legal assistance to them shall be duty bound to proceed with special dispatch if the accused has been remanded in custody". In this sense the said entities are bound, ex officio, to be alert to possible delays and to take all steps necessary to facilitate the proceedings.

259. Under the provisions of article 213/I of the ZKP and article 101/I (9) of the Courts Act, supervision of the treatment of detainees is exercised ex officio by the president of the locally competent circuit court, i.e. the higher form of court of the first instance. The ZKP states: "The president of the court or a judge designated by him shall visit detainees at least once a week and, if he deems it necessary, gather information from detainees, even without the presence of the warden or guards, about the quality of the food, the provision of other supplies and the way they are treated. He shall be bound to take the necessary steps to remove the irregularities found during the inspection of the prison. The judge designated by the president of the court may never be the investigating judge."

260. Under the provision of article 473/III of the ZKP, in relation to minors on remand the juvenile judge shall have the same rights as the investigating judge in relation to detainees.

261. Under the provisions of article 31/II of the ZIKS and article 101/I (9) of the Courts Act, supervision of the treatment of prisoners is exercised ex officio by the president of the locally-competent circuit court. In his exercise of supervision, the judge "gathers information from detainees on how they are treated and on the implementation of their rights without the presence of any workers employed at the correctional penitentiary institution" (ZIKS).

262. Under the provision of article 489 of the ZKP, the administration of an institution in which a correctional measure against a minor is implemented "shall be bound to report every six months on the conduct of a minor to the court which pronounced the educational measure". The juvenile judge may pay personal visits to minors committed to the institution. The juvenile judge may gather information on the enforcement of other educational measures through the intermediary of a social welfare agency, and may entrust this task to a particular specialist (social worker, special-education teacher and others) if there is one on the court staff. Under the explicit provision of article 489/II of the ZKP, "the social welfare agency shall be bound every six months at least to inform the court which pronounced the educational measure of the implementation thereof".

263. General supervision of the enforcement of prison sentences is also performed by the RS Ministry of Justice (article 31 of the Criminal Sanctions Enforcement Act), or more precisely, its organizational unit (the Administration for the Enforcement of Criminal Sanctions).

264. The Criminal Sanctions Enforcement Act incorporates a number of general and special duties vested in national bodies; one such duty is to monitor, ex officio, the protection of human rights in relation to the enforcement of criminal sanctions. So, for example, article 5/II of the ZIKS contains the following provisions: "In order to improve the measures relating to the enforcement of criminal sanctions, the RS Ministry of Justice and other bodies responsible for the enforcement of criminal sanctions shall cooperate with scientific organizations, professional associations, and other interested bodies, organizations and communities". With regard to the repeated disciplinary sanction of a minor serving a juvenile detention sentence, article 107/III of the ZIKS sets out the special duty to inform the RS Ministry of Justice of the following: "In the event that the disciplinary sanction of committal to confinement is pronounced for a minor for the second time within three months, the warden of the correctional penitentiary institution shall inform the RS Ministry of Justice of every further pronouncement of this punishment".

265. Under article 201/III, supervision of the correctional centre is exercised ex officio by the RS Ministry of Justice.

266. As for the security measure of compulsory psychiatric treatment under the KZRS, the court which pronounced this measure is responsible for monitoring its enforcement. The provision of article 64/II of the KZRS states: "The discharge of the perpetrator from the health institution shall be ordered by the court upon its determining that treatment and detention are no longer necessary. After the lapse of each consecutive period of one year, the court shall decide whether further treatment and custody are necessary." Similarly, the provision of article 65/III of the KZRS states: "After a period of one year, the court shall consider whether further compulsory psychiatric treatment at liberty is necessary".

267. Related official duties are vested in the court with respect to the supervision of the enforcement of a pronounced educational or educational/security measure of committal to a training institution. Article 81/IV of the KZRS includes the following provision: "If such an educational measure has been ordered for a juvenile offender instead of the security measure referred to in the second paragraph of the present article, after the lapse of each consecutive calendar year the court shall reconsider whether further treatment and custody are necessary for the offender. When the juvenile offender becomes an adult, the court shall examine whether his further stay in the institution is necessary or whether he should be transferred to a corresponding institution for adults".

268. In addition, the court monitors ex officio the enforcement of the pronounced educational measure of committal to a correctional institution. The provision of article 80/III of the KZRS prescribes the following: "Such a measure shall be administered for an indefinite period of time and the court shall subsequently order its termination".

269. A special possibility for supervision of the treatment of accused minors is set out in misdemeanours proceedings. Under article 234 of the Misdemeanours Act, the following entities are charged with the special right to be informed of developments within proceedings against minors, as well as the right to give proposals and draw attention to facts and evidence important for passing a just ruling: social care bodies, the parents of the accused, or the adoptive parent, foster parent or custodian of the accused. This is a special form of supervision of the operation of the State, which is potentially effective in terms of preventing torture and related unlawful encroachments on the rights of accused or convicted persons.

270. Official supervision of the military is separately regulated in article 85 of the Defence Act. The full text of this article reads as follows: "(I) The minister shall be obliged to enable the working body of the National Assembly competent for supervision of the work of security intelligence services to exercise constant supervision of the work of the security intelligence service at the ministry and the military police. (II) The minister shall submit to the working body referred to in the previous paragraph a regular annual report on the work of the security intelligence service at the ministry and the military police, as well as on the use of special operational methods and means". Similarly, article 86 of the same act sets out the obligations of the Defence Inspectorate and, along with them, official supervision of the observation of human rights in the military.

271. Under article 32 of the Defence Act, the supplementary special services (the intelligence security service of the RS Ministry of Defence and the military police) are obliged to carry out, ex officio, the prevention, detection and legal investigation of criminal offences at the ministry and in the Slovene Armed Forces, including cases which involve torture and other cruel, inhuman and degrading treatment or punishment.

272. Under the provision of point 43/II of the Rules of Service in the Slovene Armed Forces, all persons who have higher ranks or positions are obliged to intervene in order to prevent other persons from committing a criminal offence, irrespective of whether they have the power to issue orders or not. This undoubtedly includes the prevention of torture and other cruel, inhuman and degrading treatment or punishment in the military.

273. According to the Rules of Service in the Slovene Armed Forces (point 53/IV), military persons facing an order which at the same time constitutes solicitation to commit a serious criminal offence "must refuse to execute such an order (...) and as soon as this is possible notify the superior of the military person who has issued such an order of this". The superior who receives this notification must then notify his superior headquarters, which in turn must notify the General Headquarters of the Slovene Armed Forces.

274. Under article 42 of the Human Rights Ombudsman Act (Ur. l. RS No. 73/93), the Human Rights Ombudsman may "enter the official premises of any national body, local community body or holder of public authorizations" and, in particular, "carry out examinations of prisons and other premises in which persons deprived of their liberty reside, as well as of other institutions in which freedom of movement is restricted; he may also do so upon his own initiative" (article 26/II).

275. In conclusion, we must stress the efforts made by the law and other sciences towards a prompt analysis of rules, instructions, methods and practices of interrogation within the meaning of article 11 of the Convention against Torture. With respect to their central activities, this problem is dealt with by various bodies and organizations at the Slovene universities and at independent higher education institutions. For example, in the last five years scientific legal and criminological research has been carried out by the Faculty of Law of the University of Ljubljana, the Institute of Criminology at this faculty, and others.

2.

Statistics and specific features in practice

276. On page 43 of his 1996 annual report to the RS National Assembly, the Human Rights Ombudsman stated that judges, as a rule, regularly monitored detainees by carrying out the prescribed personal visits while also drawing attention to the concrete example of an institution for the enforcement of sentences which was not visited by judges on a regular basis for several weeks during the year. He also drew attention to a statement (which in his opinion is legally unacceptable) made by a judge/president of a circuit court (a higher form of a court of the first instance), claiming that "the procedure of monitoring a detainee (...) does not cover the detainee's treatment of himself" or, in other words, does not cover any danger that a detainee with strong suicidal tendencies might pose to himself.

277. As mentioned before (see report above), since the very beginning of his work the Human Rights Ombudsman has regularly criticized the insufficient judicial and other types of supervision of forced hospitalization in psychiatric institutions.

278. As an interesting issue, which at least implicitly shows the level of qualification of State officials directly charged with tasks relating to the protection of persons who have been deprived of their liberty, we would like to mention the educational structure in institutions for the enforcement of prison sentences and in the Radeče Correctional Centre (the only correctional centre in the RS) as on 31 December 1997. According to official data (Source: MP RS), on that day, of the total number of employees (866), 63 employees had less than secondary level education (7.2 per cent), 566 employees had a secondary education (65.4 per cent), 142 had

two years of higher education (16.4 per cent) and 95 employees had higher education (11 per cent). None of the employees had a Master's degree or doctorate.

Article 12

1.

279. Since the treatment covered by the Convention against Torture (articles 1/I and 16/I) is rendered a criminal offence by criminal law in Slovenia (see the above report on article 1 of the Convention against Torture for details), criminal sanctions arising from it are pronounced by courts (in accordance with the ZKP and the Courts Act). The role of prosecution in courts is played ex officio by State prosecutors (in accordance with the ZKP and the Office of the State Prosecutor Act, Ur. l. RS No. 63/94), while preliminary criminal investigation is the responsibility of the police, under the special supervision of the competent State prosecutor (in accordance with the ZKP and the Internal Affairs Act).

280. Under article 125 of the Constitution of the Republic of Slovenia, "judges shall independently exercise their duties and functions in accordance with this Constitution and with the law". This provision is concretized in a number of provisions of the Constitution (method of election, incompatibility of the function of a judge with certain other functions and activities, the criminal-law immunity of judges) and in specific pieces of primary and secondary legislation. The strict educational and other criteria for selection and permanent office (in accordance with the Judicial Services Act, Ur. l. RS No. 19/94) additionally guarantee elementary independence for the judiciary. In addition, judges are guaranteed a relatively good economic status by law.

281. The system of regular and extraordinary legal instruments within criminal proceedings (the ZKP) ensures a great deal of formal independence for courts of the lower instance even with respect to standpoints held by courts of the higher instance, since there is no formal dependence of lower-instance judges on decisions rendered by higher-instance courts.

282. An instrument of formal internal control within the judiciary aimed first and foremost at confronting unnecessary delays can be found in particular in the provisions of article 185 of the ZKP. This article reads as follows: "(I) If an investigation is not completed within a period of six months, the investigating judge shall be bound to inform the president of the court of the reasons for this. (II) The president of the court shall take the necessary steps for the investigation to be brought to a close."

283. State prosecutors are appointed by the RS Government at the proposal of the RS Minister of Justice, as the supreme body of executive power in the country, except for the Attorney-General, who is appointed by the RS National Assembly (in accordance with the Office of the State Prosecutor Act). The selection criteria are linked to the criteria applying to judges. The term of office of State prosecutors is permanent. As with judges, State prosecutors are guaranteed a relatively good economic status by law.

284. In accordance with the ZKP, State prosecutors officially (ex officio) prosecute all officially prosecutable criminal offences, i.e. criminal offences for which substantive criminal

law does not separately provide for private-law prosecution or criminal prosecution on the basis of a proposal (according to valid Slovene legislation, the great majority of offences are officially prosecutable in accordance with the KZRS).[61]

285. Supervision of the work of prosecutors is set out in the Office of the State Prosecutor Act. Among other things, this act governs the supervision of the work of lower-level prosecution entities by higher-level prosecution entities, and the relation between the RS Ministry of Justice and Slovene lower- and higher-level prosecution entities. For example, the following provisions can be found: "(I) Regional State prosecutor's offices shall be obliged to inform the Office of the State Prosecutor of the Republic of Slovenia without delay of criminal matters of wider public importance or in which the basic legal issues of criminal prosecution are unclear. (II) In connection with the carrying-out of his competencies, the Minister of Justice may demand that State prosecutor's offices report to him on matters they are dealing with." Article 62 further declares: "State prosecutor's offices shall send an annual report to higher-level State prosecutor's offices and to the Ministry of Justice, and the Office of the State Prosecutor of the Republic of Slovenia shall send a combined annual report on the work of State prosecutor's offices to the National Assembly." In addition, article 64 states: "(I) The Attorney-General of the Republic of Slovenia shall issue general instructions on the activities of State prosecutors relating to the uniform application of the law in State prosecutor's offices and to the coordination of prosecution policy. (II) In matters within their competence, the heads of regional or higher State prosecutor's offices may issue compulsory general instructions on the activities of State prosecutors and State prosecutor's offices. (III) Before a State prosecutor issues instructions under the first or second paragraph of this article, the proposed instructions must be debated at a meeting of regional and higher State prosecutors. (IV) The instructions under the first and second paragraphs of this article must be issued in writing."

286. Special attention must be drawn to article 65 of the same Act, which reads: "(I) If a State prosecutor believes that following the instructions would lead to a decision that would be in violation of the Constitution or the law, or if he has other serious doubts concerning the instructions, he shall report this (in writing) to a higher leading State prosecutor and to the issuer of the instructions. He shall send this notification before performing the procedural act or applying the measure to which the instruction relates, unless delaying the procedural act or measure would have irredeemable legal or material consequences. (II) If a State prosecutor is convinced that unconstitutional or damaging actions are being required of him, the higher State prosecutor shall relieve him of further work in the matter concerned, unless there is a danger that this could lead to an irredeemable delay to an urgent procedural act or measure. (III) In the case referred to in the second paragraph of this article, the superior State prosecutor shall decide on the matter or shall allocate it to another State prosecutor with his consent."

287. The other relevant articles of this act read as follows.

288. Article 66. A superior and higher State prosecutor may take over an individual matter or task for which a lower State prosecutor is otherwise competent.

289. Article 67. (I) A higher State prosecutor's office shall carry out an inspection of the operations of regional State prosecutor's offices in its area by inspecting the documents to which

it demands access and in some other appropriate manner, and at least once every three years by directly reviewing the documentation and the records at the regional State prosecutor's office. (II) The Office of the State Prosecutor of the Republic of Slovenia shall also exercise its right to the inspection of lower-level State prosecutor's offices in the manner stipulated in the preceding paragraph, whereby it must carry out a direct inspection of the operations of higher State prosecutor's offices at least once every three years, and the operations of regional State prosecutor's offices at least once every four years. (III) The reports on the general inspections referred to in the first paragraph of this article shall be sent to the Attorney-General of the Republic of Slovenia and to the Minister of Justice. Reports on the general inspections referred to in the preceding paragraph shall also be sent to the Minister of Justice. The State prosecutors at the body whose operations were inspected must be acquainted with the findings of the inspection.

290. Article 68. (I) Complaints based on inspection in connection with the work of a regional State prosecutor shall be sent to the competent head of the higher State prosecutor's office, and complaints based on inspection in connection with the work of other State prosecutors shall be sent to the Attorney-General. If a complaint based on an inspection is not obviously unsubstantiated, the competent head of the State prosecutor's office shall acquaint the State prosecutor to whose work the complaint pertains with its contents, and require from him an explanation or a report on the circumstances or facts cited by the complainant. (II) Unless otherwise determined by law, inspection of the records and other documentation of a State prosecutor's office shall only be permitted by State prosecutors and State officials from the Ministry of Justice assigned to the ministry as State prosecutors. (III) A court or the National Assembly may demand to inspect the documents referred to in the preceding paragraph insofar as they relate to the subject of criminal proceedings or to a parliamentary inquiry. (IV) The Minister of Justice may permit the inspection of the records and documents of a State prosecutor's office by persons who demonstrate that the data contained in the records is required for scientific research. This permission may be limited to archived documents and records.

291. Of course, anyone has the right to file a suit against criminal offences committed by a State prosecutor by way of the transgression or abuse of his official authorizations, although the suit can be lodged only with the competent State prosecutor (which in practice and as a rule is the State prosecutor against whom the suit is being lodged).

292. A special supervisory function in Slovene criminal proceedings is performed by the possibility of subsidiary prosecution, i.e. privately assuming the prosecution case from the State prosecutor as generally specified in the ZKP. Among other things this act states the following.

293. Article 60. (I) If the public prosecutor finds that there are no grounds for prosecuting a criminal offence by virtue of office or for prosecuting some of the accused participants, he shall, within eight days, inform the injured party thereof and shall instruct him that he may start prosecution by himself. The same procedure shall be applied by the court when the public prosecutor abandons prosecution. (II) The injured party shall be entitled to institute or continue prosecution within eight days of the day he received the information from the preceding paragraph. (III) If the public prosecutor withdraws the charge sheet, the injured party may continue prosecution under the preferred charge sheet, or may file a new charge sheet. (IV) Where the injured party has not been informed that the public prosecutor has failed to begin

prosecution, the injured party may, within three months of the day the public prosecutor dismissed the crime report, declare before the competent court that he wishes to continue prosecution. (V) The public prosecutor or the court shall, in informing the injured party that he may begin prosecution, also instruct him of the steps he may take to exercise that right. (VI) If the injured party, in his capacity as prosecutor, dies before the term for starting the prosecution expires, or if he dies while proceedings are in progress, his spouse or the person with whom he was living in domestic partnership, as well as his children, parents, adopted children, adoptive parents, brothers and sisters may, within three months of his death, institute prosecution or declare that the prosecution be continued.

294. Article 61. (I) If the State prosecutor withdraws the charge sheet at the main hearing, the injured party shall be bound to declare forthwith whether he intends to continue with prosecution. If the injured party, after being duly summoned, fails to appear at the main hearing, or if the summons could not be served on him for failure on his part to inform the court of a change of address or place of residence, it shall be considered that he does not intend to continue with prosecution. (II) The presiding judge of the panel of the court of first instance shall grant the reinstatement of the previous state of affairs to the injured party who was not duly summoned or, although duly summoned, was for legitimate reasons prevented from appearing at the main hearing at which, following the withdrawal of the charge sheet by the public prosecutor, a ruling was passed to drop charges, provided that within eight days of the day the ruling was served on him the injured party requested the reinstatement of the previous state of affairs and declared in the request that he wished to continue with prosecution. In that case, a new main hearing shall be scheduled and the previous ruling invalidated by a ruling issued on the basis of the new main hearing. If a duly-summoned injured party fails to appear at the new main hearing, the previous ruling shall remain in force. (III) In the case referred to in the preceding paragraph, the provisions of the third and fourth paragraphs of article 58 of the present Code shall be applied.

295. Article 62. (I) If within the time limit prescribed by law the injured party fails to institute or to continue with prosecution, or if the injured party, in his capacity as prosecutor, fails to appear at the main hearing although duly summoned, or if the summons could not be served on him because of his failure to inform the court of a change of address or place of residence, it shall be considered that he has abandoned the prosecution. (II) In a case where the injured party, after being duly summoned, fails to appear at the main hearing, the provisions of the second to fourth paragraphs of article 58 of the present Code shall be applied.

296. Article 63. (I) The injured party, in his capacity as prosecutor, shall have the same rights as the public prosecutor, with the exception of those vested in the public prosecutor ex officio. (II) In proceedings conducted at the request of the injured party in his capacity as prosecutor, the public prosecutor shall be entitled to take over and act for the prosecution at any time pending the conclusion of the main hearing.

297. Article 64. (I) Where the injured party is a minor or a person declared legally incapable of work, his legal representative shall be entitled to make all statements and perform all acts which the injured party is entitled to make or perform under the present Code. (II) An injured party who has reached the age of 16 shall be entitled to make statements and perform procedural acts by himself.

298. Article 65. (I) The private prosecutor, the injured party and the injured party in his capacity as prosecutor, as well as their legal representatives, may exercise their rights in connection with the proceedings through the intermediary services of an attorney. (II) If a criminal offence punishable by imprisonment of more than three years is tried in court, the court may, upon petition of the injured party acting as the prosecutor, appoint an attorney for the injured party if that is in the interests of the proceedings and if the injured party cannot afford to pay the expenses of representation. The petition shall be decided upon by the investigating or presiding judge, and the attorney shall be appointed by the president of the court from among members of the Bar.

299. The final appointment of misdemeanours judges in the Republic of Slovenia is the responsibility of the RS National Assembly (Misdemeanours Act (Changes and Additions), Ur. l. RS No. 87/97).

300. The Human Rights Ombudsman, as an institution anchored in article 159 of the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act, is responsible ex officio for monitoring the observation and exercise of human rights in Slovenia (see especially article 26/II of the Human Rights Ombudsman Act). In addition, he is also responsible ex officio for introducing suitable procedures in the event that he receives an initiative for the introduction of proceedings relating to violations of human rights (article 28 of the Human Rights Ombudsman Act). Under articles 2 and 12 of the Human Rights Ombudsman Act, or chapter II of this Act, the Human Rights Ombudsman is elected by the National Assembly by means of a qualified majority. The Human Rights Ombudsman enjoys independence in the performance of his work. To date, no public complaints against possible partiality or against potential political or other biases by the Human Rights Ombudsman have been recorded.

2.

Statistics and specific features in practice

301. The deprivation of any person's liberty without legal basis (i.e. unlawfully) in any legal proceedings (including criminal, misdemeanour, disciplinary, administrative, non-contentious and other proceedings) constitutes unlawful treatment, which is officially prosecuted in Slovenia as a criminal offence (false imprisonment, article 143/II of the KZRS) and, at the same time, in parallel, as a disciplinary offence (article 4 of the State Administration Workers Act and article 57 of the Defence Act). In practice, both criminal procedures, as a rule, run parallel to each other and are dependent on one another. By the nature of the matter, the disciplinary procedure is normally completed before the criminal procedure.

302. The situation in practice is similar in cases of discrimination, extortion, maltreatment, bodily harm and so on, when these phenomena emerge within the said legal proceedings dealing with the transgression or abuse of official authorizations. All these violations involve aspects of both criminal offence and disciplinary offence, and both procedures run parallel to each other as a rule. In this sense, an unlawful act committed in the military and with aspects of a criminal offence must always be investigated twice. This is because any criminal offence committed in the military is always, at least implicitly, also defined as a disciplinary offence.

303. As for the judicial protection of human rights, in his 1996 annual report to the National Assembly (Source: RS Human Rights Ombudsman) the RS Human Rights Ombudsman states that "most judicial procedures (...) are unreasonably long". This results in huge delays in courts, undermining the legal protection of people (p. 107/1996), while the number of criminal prosecution cases subjected to the statute of limitations is also rising at an abnormal rate (see p. 117/1996). The Human Rights Ombudsman maintains that the so-called supervisory appeals arising from unreasonable delays in pursuing legal remedy (p. 111/1996) are particularly ineffective. In addition, he draws attention to two cases of incorrect response by judges to legal interventions initiated by the Human Rights Ombudsman (p. 112/1996).

304. The RS Human Rights Ombudsman also believes that the number of delays related to the work of misdemeanours judges and the number of misdemeanour cases subjected to statutes of limitations are at a critical level and entirely unacceptable for a State governed by the rule of law (p. 118/1996). This can also be construed from the Human Rights Ombudsman's special reports for 1997 (Source: RS Human Rights Ombudsman).

305. On page 117 of his 1996 report to the RS National Assembly, the RS Human Rights Ombudsman stated that the number of initiatives in connection with the work of State prosecutors was "relatively low". Most of these initiatives were introduced by injured parties which, in their complaints, stressed that there had been either unreasonable delays in the decision-making process or expressed disagreement with the ruling passed on the basis of the lodged crime report. The Human Rights Ombudsman highlighted the fact that the response by State prosecutors to his interventions was "prompt and correct". He also stressed that, in practice, there were very few complaints lodged on the basis of article 148 of the ZKP (complaint lodged with a prosecutor against actions of internal affairs agencies within preliminary criminal proceedings). The Human Rights Ombudsman's special reports for 1997 included no significant criticisms of the work of State prosecution bodies (Source: RS Human Rights Ombudsman).

306. Special attention should be given to the danger of discrimination against members of certain special population groups within criminal proceedings, either in terms of the discriminatorily strict treatment of perpetrators who are members of these groups, or in terms of the discriminatorily superficial treatment of victims who are members of these groups (also, and in particular, with respect to issues of torture within the meaning of the Convention against Torture). In addition to various ethnic groups, foreign persons, homosexual and transsexual persons, members of the Roma community are, for various reasons (which are very complex and hard to control), subjected to potential discriminatory treatment.

307. The authorities of the Republic of Slovenia have stated that, in Slovenia, Roma occupy a "significant place" among "those who violate laws and other regulations", and that (also as a result of this) they are frequently the target of "indisposition and intolerance on the part of the majority population" (Source: Information of the RS Government on the Position of Roma in the Republic of Slovenia), and therefore implicitly subject (at least potentially) to state prosecution in practice. For the purpose of eliminating potential discrimination against Roma, the RS Government is carrying out various projects of adjustment of the lifestyle of Roma to that of the local population, with the eventual aim of improving their overall social status (see appendices on the Roma question). The Government is also carrying out media and related

activities aimed at increasing the majority population's tolerance of Roma. With these measures the RS Government wishes to indirectly reduce the probability of the actual unequal treatment of Roma within criminal proceedings,[62] particularly in procedures conducted by the police, including possible cases of torture within the meaning of the Convention against Torture.

308. The position of Roma and of other marginal population groups (in particular, foreign persons) in the Republic of Slovenia is more or less systematically monitored by different non-governmental organizations based in Slovenia, which report their findings to the media, the authorities and foreign entities. Their operation must therefore be dealt with separately as part of the fight against torture within the meaning of the Convention against Torture.

309. The RS Government has two commissions coordinating the operation of national bodies responsible for minorities. The Commission for Ethnic Community Issues coordinates the realization of the constitutional obligations which the State has towards the Italian and Hungarian ethnic communities, while the Commission for Roma Issues monitors the implementation of government measures for the protection of Roma. Both commissions consist of all government departments' representatives responsible for carrying out individual tasks, as well as representatives of both indigenous ethnic minorities and of Roma. As a special body of the RS Government, the Ethnic Minorities Office coordinates the work of the two commissions.

Article 13

1.

310. On the basis of the Constitution of the Republic of Slovenia, whose article 22 declares that "each person shall be guaranteed equality in the protection of his rights in any proceedings before a court, as well as before any government body, local government body or statutory authority which determines the rights, obligations or legal entitlements of such a person", while article 25 adds that "each person shall be guaranteed the right to appeal and the right to any other legal redress in relation to the decision of any court, government body, local government body or statutory authority which determines the rights, obligations or legal entitlements of such a person", various Slovene acts govern the rights to lodge a crime report against a criminal offence, appeal or complaint, and the right to other legal redress that can be used in relation to cases of torture within different legal proceedings.

311. Article 146/I of the Criminal Procedure Act states that: "Any person may report a criminal offence which is liable to public prosecution ex officio". This provision also covers temporarily-detained, detained and imprisoned persons, including persons committed to compulsory psychiatric treatment on any legal basis, soldiers detained by the military police, defendants in criminal proceedings, juvenile detainees in correctional centres, and persons serving prison sentences. In accordance with article 147/I of the ZKP, crime reports are submitted to the State prosecutor. Crime reports submitted to the court, an internal affairs agency or an unauthorized State prosecutor are accepted and forwarded to the competent public prosecutor (article 147/III of the ZKP).

312. In addition to crime reports, preliminary criminal proceedings allow a wide range of appeals that can be lodged with the competent State prosecutor by any directly-affected persons

against various coercive measures by internal affairs agencies (the police) and against detention executed by officials at the Ministry of the Interior (the police), while a special appeal may be lodged against the decision on such detention with the external-level panel (panel of three judges) of the circuit court (article 25, in connection with article 157/VII of the ZKP). The panel must rule on the appeal within 48 hours.

313. Under the Internal Affairs Act (Ur. l. SRS Nos. 28/80, 38/88 and 27/89, amended by Ur. l. RS Nos. 8/90, 19/91, 4/92, 58/93, 87/97 and 87/97), with respect to possible violations of the rights of a detainee who has been deprived of his liberty by officials at the Ministry of the Interior (including the police), a special appeal may be lodged with the Minister of the Interior (which must rule on the appeal within 48 hours) against any measure executed by officials at the Ministry of the Interior, including police officers. The same act envisages another possibility for appeal: an appeal lodged with the Office for Appeals and Internal Protection, a special organizational unit at the RS Ministry of the Interior. It consists of employees of the Ministry of the Interior, who are appointed by the RS Minister of the Interior.[63]

314. The Internal Affairs Act sets out a special appeal against detention in accordance with this act. Articles 50/VI, VII and VIII state: "Detained persons shall have the right to lodge an appeal with the Minister of the Interior against a decision on detention within 24 hours. The body which ordered detention must send the decision and the relevant records to the minister for consideration. The minister must rule on the case within 48 hours. The appeal shall not stay the execution of the measure."

315. Different criminal proceedings envisage a substantial number of various primary possibilities for appeal (e.g. under article 202/IV or article 432/II of the ZKP) against detention in a criminal case.

316. Various additional appeals against decisions on detention may be lodged with higher courts, for example, under articles 205/II, 307/II in connection with article 205/II, and 472/II in connection with article 451 of the ZKP. Another possibility is to use the extraordinary legal instrument – request for the protection of legality (articles 420 to 428 of the ZKP).

317. In the event of delays to judicial rulings on individual rights or legal interests, an appeal may be lodged with the president of the court or with the RS Ministry of Justice (article 72 of the Courts Act); in addition, an appeal may be filed with the RS Constitutional Court (under articles 50/I and 52/II of the Constitutional Court Act). In this connection, the provision of article 191 of the ZKP needs to be stressed. It reads: "(I) Parties and the injured person may always turn to the president of the court before which an investigation is conducted to complain against procrastination and other irregularities during the investigation. (II) The president of the court shall examine the allegations contained in the complaints and inform the person who lodged the complaint of any steps taken thereon."

318. Under the provision of article 213 of the ZKP and article 101/I (9) of the Courts Act, supervision of the treatment of detainees is exercised by the president of the circuit court, i.e. a higher form of court of the first instance. As already mentioned in the report, the ZKP stipulates that: "(I) The president of the court or a judge designated by him shall visit detainees at least once a week and, if he deems it necessary, gather information from detainees, even without the

presence of the warden or guards, about the quality of the food, the provision of other supplies and the way they are treated. He shall be bound to take the steps necessary to remove the irregularities found during inspection of the prison. The judge designated by the president of the court may never be the investigating judge. (II) The president of the court and the investigating judge may visit detainees, talk to them and hear their complaints at any time." This is an important informal and very simple way to complain, including complaints due to possible torture and other cruel, inhuman or degrading treatment or punishment.

319. In general and in accordance with the general principles of the right to appeal covered by the criminal procedural law included in the ZKP, there are a number of different possibilities for appeal against all important rulings by judges in criminal proceedings.

320. Under the Criminal Sanctions Enforcement Act, a convict who believes that his rights were violated during his sentence, "or because of other irregularities", may appeal to the warden of the institution in which he is serving his sentence (article 75). If he does not receive a response to his appeal or if he is not satisfied with the warden's decision, he has, in principle, the right to appeal to the RS Ministry of Justice (with the exception of decisions on the pronouncement of disciplinary sanctions, excluding the severest disciplinary measure of committal to confinement, where appeal is nevertheless permitted).

321. An appeal against the disciplinary sanction of committal to confinement may be filed with the RS Ministry of Justice (Administration for the Enforcement of Criminal Sanctions at this ministry) within three days of the receipt of the decision. The ministry must rule on the appeal within three days by upholding, modifying or annulling the decision (article 79/III of the ZIKS).

322. Under the explicit provision of article 75/III of the Criminal Sanctions Enforcement Act, a convict is also always entitled to the right to file an appeal "due to violations of his rights and because of other irregularities" with the president of the locally-competent circuit court, who is responsible for exercising supervision of the enforcement of prison sentences (article 101/I (9) of the Courts Act).

323. Under the provision of article 107 of the ZIKS, the disciplinary sanction of committal to confinement may be pronounced for a convicted minor serving a juvenile detention sentence for the severest violations of prison rules, work discipline and official orders, but may not exceed seven days of confinement. The procedure of pronouncement and the possibilities for appeal are the same as those applying to adult convicts in accordance with article 102 of the ZIKS. A special mention must be made here of article 107/III of the ZIKS, which reads: "In the event that the disciplinary sanction of committal to confinement is pronounced for a minor more than once within a period of three months, the warden of the penitentiary correctional centre must notify the RS Ministry of Justice (Administration for the Enforcement of Criminal Sanctions at this ministry) of every repeat pronouncement of this disciplinary sanction."

324. An appeal against a decision on the disciplinary sanction of committal to a separate room as the severest disciplinary sanction during the enforcement of the educational measure of committal to a correctional centre may be filed by the minor with the RS Ministry of Justice

(Administration for the Enforcement of Criminal Sanctions at this ministry) within three days of the pronouncement of this sanction. The ministry must rule on the appeal within three days by upholding, modifying or annulling the decision (article 209/IV of the ZIKS).

325. The Criminal Sanctions Enforcement Act and the Regulations on the Enforcement of Prison Sentences contain a number of detailed provisions on the convict's rights to exchange correspondence in an institution for the enforcement of sanctions. Both legal acts generally permit the free sending and receiving of letters, and in particular the unrestricted filing of requests, initiatives and appeals.[64]

326. Under the Human Rights Ombudsman Act, persons deprived of their liberty have the "right to send to the Human Rights Ombudsman an initiative for the introduction of a procedure in a sealed envelope" (article 27/III). The same act authorizes the Human Rights Ombudsman to "perform inspections of prisons and other premises in which persons deprived of their liberty reside, and of other institutions in which freedom of movement is restricted" (article 42/II). He also has the right to hold conversations with persons kept in these institutions without the presence of other persons (article 42/III).

327. Judicial protection is, in principle, also permitted with respect to the provisions on the enforcement of criminal sanctions: an administrative dispute before the RS Administrative Court.

328. Within misdemeanours proceedings, an appeal against a decision in the first instance may, in principle, be filed with the relevant-instance body. In addition, a number of extraordinary legal instruments may be used (chapter 13 of the Misdemeanours Act), including a request for judicial protection, which must be lodged with the Supreme Court of the Republic of Slovenia (article 201/II). Under the provision of article 202, an appeal may also be lodged against a decision issued in the second instance if a prison sentence has been pronounced in misdemeanours proceedings. This is possible if the misdemeanours ruling is deemed to have violated substantive or procedural law, if the procedure of determining the actual state of affairs was incomplete, or if incorrect conclusions regarding the actual state of affairs were made on the basis of the facts decided (article 203).

329. Under the Rules of Service in the Slovene Armed Forces, which apply to all persons carrying out military service and as such subjected to obedience to superiors defined by public law, military persons have, under article 94, the right to file an objection or an appeal. The appeal may refer to official affairs, or to treatment by another military person, superior or unit. The complaint may be filed only via official channels, i.e. directly with the superior officer who has the authority to decide. The latter must investigate the complaint and, if it is within his competence, to rule on the complaint within seven days; otherwise, he must, within three days, deliver the complaint to the competent person, who must then rule on the complaint within seven days. Under article 95/II, a superior may not retain a complaint which he is not competent to rule on. If a superior does not rule on the complaint within the prescribed time limit, or if the complainant is not satisfied with his decision, the complainant may file his complaint with a higher-ranked superior (article 96); again, he may do so only via official channels or, in other words, file the complaint directly with the superior. The filing of a complaint directly with a higher-ranked superior is not separately envisaged in law.

330. Under article 86 of the Defence Act, a military person has the right to "notify the Defence Inspectorate", which is a body with administrative/inspection authorizations in the area of defence.

331. In accordance with article 26 of the Human Rights Ombudsman Act, like any other person who believes "that a document or an action by a state body, local government body or holder of public authorizations violates human rights or basic freedoms", including violations by military persons or superior officers in the military, military persons may file an initiative for the initiation of a procedure with the Human Rights Ombudsman. This possibility for an appeal is also explicitly permitted by the provision of article 52 of the Defence Act ("military personnel may request that the Human Rights Ombudsman initiate a procedure if they believe that their rights or basic freedoms have been limited or violated during military service"), and by article 104 of the Rules of Service in the Slovene Armed Forces, although as a piece of secondary legislation issued on the basis of the Defence Act the Rules of Service declare the appeal to the Human Rights Ombudsman to be a subsidiary instrument to be used when all other appeal channels within the military system are exhausted (article 104/II of the Rules of Service).

332. The Organization and Financing of Schooling and Education Act envisages special appeal channels in the event of violations of the rights of a child in nursery schools and schools. Under the provision of article 49, the councils of public nursery schools and schools "decide on complaints related to the rights, obligations and responsibilities of workers arising from labour relations, complaints expressed by parents in relation to schooling and educational work in nursery schools and schools", including violations which exhibit signs of torture and other cruel, inhuman and degrading treatment or punishment. Under the provision of the fifth indent of article 66/III of the same act, the parents' association, as a special counselling and supervisory body in schooling and educational institutions, deals among other things with complaints raised by parents in relation to schooling and educational work.

333. With respect to violations of the rights of a child in school, the possibility of "reporting violations" to the school inspectorate is envisaged in the Education Inspection Act. An appeal may be lodged with the RS Ministry of Education and Sport against a decision by the inspectorate (article 21).

334. Under article 492/V of the ZKP, an appeal may be lodged within the security measure procedure which results in forced detention in a psychiatric institution against the court's decision (written ruling) on the compulsory detention of a person who has committed a criminal offence in an incapacitated state; this kind of appeal has very wide active legitimacy (in addition to the accused person, it may include his defence counsel, spouse, extra-marital partner, lineal relatives, brother, sister, adoptive parent, adoptive child and custodian).

335. According to the Non-Contentious Proceedings Act, it is also possible to file a similar appeal in cases of forced detention in a psychiatric institution outside criminal proceedings. The act declares that "(...) An appeal against a ruling on detention may be filed by the detained person, his legal representative or custodian, the competent social care body, the spouse or the person who has lived with the detained person in extra-marital community for a longer period, lineal relatives, persons related to the detained person collaterally up to two removes, and a health organization. The appeal must be filed within three days (of the receipt of the decision on

detention). The appeal shall not stay the execution of the decision. The appeal shall be decided by a court of the second instance within three days. A revision shall be permitted against the decision by the court of the second instance" (article 77).

336. Slovene health administration law envisages various channels through which appeals may be filed against measures of medical treatment, including forced detention in a psychiatric health institution: an appeal filed with the health institution, the Slovene Chamber of Medical Practitioners, the Slovene Health Insurance Institute, and the RS Ministry of Health. Of course, an administrative dispute can also be initiated as judicial protection. In addition, persons in forced detention may always resort to filing a crime report arising from negligent medical treatment, maltreatment, false imprisonment, bodily harm or any other criminal offence prosecuted ex officio or at the proposal of the injured party. Finally, under the Human Rights Ombudsman Act, an initiative may be filed with the RS Human Rights Ombudsman.

337. Under the Constitutional Court Act, anyone who can prove his legal interest (a fact testifying that a regulation or a general act on the exercise of public authorizations proposed to be reviewed by the initiator directly encroaches upon his rights, legal interests or legal status) in a specific case may put forward an initiative for testing the constitutionality and lawfulness of various general legal acts (article 24).

338. In addition, an appeal may be filed with the Constitutional Court by anyone who believes that an individual act issued by a state body, local government body or holder of public authorizations violates some of his human rights or basic freedoms (article 50/I). Under the provision of article 51, a constitutional appeal may be filed only when all other legal instruments available in the country have been exhausted. Exceptionally, the Constitutional Court may rule on a constitutional appeal before all extraordinary legal instruments have been exhausted "if the alleged violation is palpable and if the appellant would suffer irredeemable consequences as a result of the execution of an individual act" (article 51/II). A constitutional appeal must be filed within 60 days of the receipt of an individual act against which it is possible to file a constitutional appeal (article 52/I). In particularly justified cases, the Constitutional Court may, pursuant to article 52/III, exceptionally decide a constitutional appeal filed after the expiry of the prescribed 60-day time limit.

339. The National Assembly incorporates a special working body - the Petitions and Appeals Commission - which deals with appeals arising in all areas. The Commission normally refers the appellant to the competent bodies (courts, state prosecutor's offices, etc.) while sometimes acting as an intermediary for finding a non-bureaucratic solution to the appellant's problems.

340. The Office of the President of the Republic of Slovenia incorporates a special service: the Amnesty and Petitions Service. This service also refers petitions for which it is not competent, or the petitioners themselves, to the competent bodies.

341. The Office of the Prime Minister of the Republic of Slovenia operates a special service for the protection of the rights of individuals: the VOX. Like the service described above, this service also refers petitions for which it is not competent, or the petitioners themselves, to the competent bodies. This service sometimes acts as an intermediary for finding non-bureaucratic solutions to problems.

342. Last but not least, with the ratification of the Convention against Torture on 15 April 1993 (published in Ur. l. RS - International Treaties, No. 7/93, 14 May 1993), and with the statement of the National Assembly, Slovenia accepted the jurisdiction of the Committee against Torture, in accordance with article 22 of the Convention. This means that anyone who alleges that he or somebody else has been a victim of violations of the provisions of the Convention committed by the Republic of Slovenia, or in the territory that falls under the jurisdiction of the Republic of Slovenia, may lodge an individual appeal with the Committee against Torture.

343. Slovene positive law does not envisage any special legal protection for the appellant or for persons who report an offence within any legal proceedings in relation to torture or other cruel, inhuman and degrading treatment or punishment which would effectively protect these persons against maltreatment or intimidation resulting from a filed appeal or given statement; nor is such protection implemented in practice. These persons are therefore provided only with the general possibilities of filing an appeal or reporting an offence (see above).

2. Statistics and specified features in practice

344. According to its management, the Slovene Police Force "is doing everything to constantly improve the quality of its services", but mistakes and misjudgements still nevertheless occur. In 1996, 1,443 complaints were filed with the Complaints and Internal Protection Office at the RS Ministry of the Interior against the work of the police; it is possible to associate some of the complaints with violations of rules set out in the Convention against Torture. According to the RS Ministry of the Interior (MNZ RS), 17.5 per cent were justified. The most frequent reason for complaints was disagreement with the measures pronounced by the police against perpetrators, followed by a lack of tact by police officers in their dealing with citizens, failure to take measures, and the use of coercive means. In terms of number of complaints, the Ljubljana, Maribor and Koper internal affairs administrations head the list (Source: MNZ RS).

345. In 1996 the RS Ministry of Justice (Administration for the Enforcement of Criminal Sanctions at this ministry) received 44 complaints by imprisoned persons (2 directly from imprisoned persons, 12 via the RS Human Rights Ombudsman, 2 via the RS National Assembly, 3 via the RS Government, 1 via non-governmental organizations, and 1 via the FRY Embassy). The complaints referred to inappropriate action taken by workers at penitentiary institutions, inappropriate healthcare, referrals to stricter sentence-serving regimes, irregularities in the exercise of the right to visits, receipt of mail and the use of telephones, poor food quality, threats by and conflicts with other inmates, etc. After investigating all the complaints (including conversations with individual complainants), the Administration declared that seven complaints were entirely or partly justified (Source: MP RS). In 1996 a total of nine convicts complained against pronounced disciplinary sanctions.

346. In 1997 the RS Ministry of Justice (Administration for the Enforcement of Criminal Sanctions at this ministry) received 65 complaints by imprisoned persons. This figure included four collective complaints signed by a total of 141 convicts. The complaints referred to inappropriate action taken by workers at penitentiary institutions, inappropriate healthcare, referrals to stricter sentence-serving regimes, irregularities in the exercise of the right to visits, the receipt of mail and the use of telephones, poor food quality, threats by and conflicts with

other inmates, etc. After investigating all the complaints (including conversations with individual complainants), the Administration declared that 14 complaints were entirely or partly justified (Source: MP RS).

347. According to the RS Ministry of Justice, all complaints were "thoroughly and carefully investigated, and reports were requested from the institutions in which the complainants were serving their sentences or in which they were detained; in addition, other relevant information was collected. The responsible workers of the Administration held personal conversations with the complainants as a rule, and checked with relevant workers at penitentiary institutions possible unclear allegations and information obtained in the complaints procedure". In its 1997 annual report, the Administration for the Enforcement of Criminal Sanctions adds: "If there was a need for this, we also checked the allegations included in the complaint with inmates where, for this purpose, we held conversations with them. In cases in which we determined that a complaint was entirely or partly justified, in the written reply which we sent to all complainants we clearly specified which right was violated or the reasons for which the action taken or behaviour exhibited by specific workers at penitentiary institutions was disputable. A copy of the reply was also sent to the institutions in which the complainants were serving their sentences. We also took the same steps in cases where, on request, we sent specific complaints to other bodies for consideration" (Source: MP RS).

348. In 1997 a total of 18 convicts complained against pronounced disciplinary sanctions (Source: MP RS).

349. Where complaints were found to be justified, the Administration intervened at the administrations of those institutions in which violations of the rights of imprisoned persons were identified. The complainants were notified in writing of the conclusions of the Administration in relation to their complaints (Source: MP RS).

350. In 1996 the Office of the Human Rights Ombudsman (in early 1997 the Office had 18 employees in addition to the Ombudsman and his three deputies) received a total of 2,513 complaints, of which 761 (30 per cent) referred to court and police procedures, 521 (21 per cent) to administrative procedures, and 302 (12 per cent) to social security issues. In the same year around 145 (6 per cent) referred specifically to various restrictions of personal freedom. The remainder of the complaints referred to accommodation issues, commercial public services, labour law issues, etc. Together with the complaints brought forward from the previous year and a number of reopened cases, the Office of the Human Rights Ombudsman dealt with 3,981 complaints in 1996, of which 82 per cent were completed.

351. In 1997 the Office of the Human Rights Ombudsman received a total of 2,886 complaints, of which 776 (27 per cent) referred to court and police procedures, 663 (23 per cent) to administrative procedures, and 397 (14 per cent) to social security issues. In the same year, around 128 (4 per cent) referred specifically to various restrictions of personal freedom. The rest of the complaints referred to accommodation issues, commercial public services, labour law issues, etc. Together with complaints brought forward from the previous year and a number of reopened cases, the Office of the Human Rights Ombudsman dealt with 3,854 complaints in 1996, of which 87 per cent were completed.

352. Finally, in 1996 the Human Rights Ombudsman received 66 complaints, including complaints against alleged unlawful or improper treatment by police officers and other persons authorized by the Ministry of the Interior, while the number of these complaints totalled 63 in 1997. In 1996 the number of complaints sent by detainees to the Ombudsman was 55 and in 1997 this number was 42. Prisoners sent 103 complaints in 1996 and 87 in 1997. The Ombudsman received one complaint by a soldier in both 1996 and 1997 (Source: RS Human Rights Ombudsman).

353. See the above sections of the report for references to non-governmental organizations which in one way or another are involved in the monitoring of human rights protection in Slovenia.

Article 14

354. Article 15 of the Constitution of the Republic of Slovenia generally guarantees the right to obtain redress for the violation of human rights, while article 26 particularly declares that "each person shall have the right to compensation for any damage suffered by him by reason of the wrongful performance by any person or body carrying out any function or other activity of any government body, local government body or statutory authority".

355. In addition to regular and general liability for compensation for individual actions, Slovene positive indemnity law (Obligational Relations Act – Ur. l. RS Nos. 29/78, 39/8, 4/89) concretizes article 26 in its article 172, which reads: "(I) Legal persons shall be liable for damage caused by their entities to a third person during or in relation to the performance of their functions. (II) If not determined otherwise by law for individual cases, legal persons shall have the right to receive compensation from those who have intentionally caused the damage (...)." On the basis of this article, individuals who have suffered damage (defined legally in the Civil Proceedings Act) may also demand compensation from the Republic of Slovenia (or exclusively from it) for having been subjected to torture and other cruel, inhuman and degrading treatment or punishment within the meaning of the Convention against Torture (unlawful encroachments on their human rights), if this torture was directly or indirectly inflicted by responsible bodies of the state administration, military, police, penitentiary correctional institutions, judiciary, etc. In accordance with article 200/I of the Obligational Relations Act, compensation may be demanded for the unlawful infliction of "bodily pain and mental pain resulting from the diminution of human activity, disfigurement, the defamation of one's good name or honour, the restriction of freedom or the right to privacy, the death of a person close to the affected person, and for fear suffered".

356. In the event of the death of the injured party, Slovene civil law sets no restrictions regarding the transfer of the right to compensation for pecuniary claims (except in cases where monetary compensation is granted due to the death of a relative, or due to physical injury suffered or health defects – these rights are not transferable). The transfer of compensation for non-pecuniary claims in the event of death is possible only in cases where these claims are validated by a written agreement or legally-binding court decision. On the basis of a valid legal title, all overdue compensation claims are also transferable, since once they become overdue these claims acquire the status of monetary assets (active assets).

357. Article 19 of the Defence Act reads: "(I) A citizen who suffers any damage in the execution of defence duties shall have a right to compensation according to general regulations. (II) A citizen or legal entity shall have a right to the compensation of actual damage suffered during military exercises. (III) A citizen who, in the execution of defence duties or in any relation to them, deliberately or due to gross negligence causes any damage shall be held responsible according to the regulations on the damage liabilities of employees in state administration. (IV) The minister responsible for defence (hereinafter: the minister) shall determine a procedure for the assessment of damages and the payment of compensation as described in paragraph 2 of this article."

358. Article 13 of the ZKP reads: "A person who has been wrongfully convicted of a criminal offence or deprived of liberty without good cause shall have the right to rehabilitation and indemnification, as well as other rights provided by the law." Chapter XXXII of the same act governs the proceedings for compensation, rehabilitation and the exercise of other rights wrongfully convicted or arrested persons. Article 538 reads: "(I) The right to seek compensation for damages inflicted by a wrongful conviction shall be enjoyed by a person who was convicted or found guilty and then acquitted and the subsequent proceedings of extraordinary judicial review were discontinued, or by a person who was acquitted of the charge or the charge against him was rejected or the charge sheet dismissed, except in instances: (1) where proceedings were discontinued or a judgement rejecting the charge was passed because in new proceedings the injured party as prosecutor or the private prosecutor refrained from prosecution, or the injured party withdrew the motion and the refrainment and withdrawal were effected in agreement with the defendant; (2) where in reopened proceedings the charge sheet was rejected by a ruling because of the lack of jurisdiction of the court, whereupon the authorized prosecutor started prosecution before the court of jurisdiction. (II) The convicted person shall not be entitled to seek compensation for damages if, by a false confession or in some other way, he deliberately brought about his conviction, except where he was forced into it. (III) Where the conviction of concurrent offences is involved, the right to seek recovery of damages may also refer to individual criminal offences in respect of which conditions for recognition of indemnification have been fulfilled."

359. The full text of the other articles of this chapter of the ZKP reads as follows:

360. Article 539. (I) The right to seek recovery of damages shall be barred by the statute of limitations after a lapse of three years from the finality of the judgement whereby the defendant was acquitted of the charge in the first instance or the charge was rejected, or after a lapse of three years from the finality of the ruling whereby the charge sheet was dismissed or proceedings in the first instance were discontinued. If the appeal was decided by a higher court, the statute of limitations shall apply after a lapse of three years from the receipt of the decision of that court. (II) Before filing a claim for damages with the court, the injured person shall address his claim to the Ministry of Justice in order to try and reach agreement about the existence of the loss and the type and extent of compensation. (III) In the instance referred to in point 2 of the first paragraph of the preceding article, the request may only be processed if the authorized prosecutor fails to institute prosecution at the court of jurisdiction within three months of the receipt of the final ruling. If the authorized prosecutor starts prosecution at the court of jurisdiction after the expiry of that time limit, proceedings for the recovery of damages shall be suspended until criminal proceedings have been concluded.

361. Article 540. (I) If the request for the recovery of damages is not granted or the Ministry of Justice and the injured person does not reach accord within three months of the filing of the request, the injured person may file a claim for damages with the court of jurisdiction. If accord was reached regarding only a part of the claim, the injured person may sue for the outstanding part. (II) The statute of limitations from the first paragraph of article 539 of the present Code shall not apply for as long as the procedure from the preceding paragraph is pending. (III) Claims for the recovery of damages shall be filed against the Republic of Slovenia.

362. Article 541. (I) Heirs shall succeed only to the right of the injured person to recover damages. If the injured person has already filed the claim, the heirs may continue proceeding only within the limits of the injured person's indemnification claim. (II) After the death of the injured person, his heirs may continue proceedings for the recovery of damages, or may initiate proceedings if the injured person died before the action became statute-barred without waiving the right to claim for damages.

363. Article 542. (I) The right to compensation shall also be enjoyed by: (1) a person who was held on remand and criminal proceedings against him were not instituted, or the charge sheet was dismissed by the final ruling, or proceedings were discontinued, or he was acquitted of the charge by the finally-binding judgement, or the charge was rejected; (2) a person who served a sentence in a correctional institution and on whom, by reason of the renewal of criminal proceedings or a request for the protection of legality, a shorter sentence was pronounced than the one he had already served or on whom a criminal sanction not involving arrest was pronounced, or who was found guilty and then acquitted; (3) a person who, by reason of an error or unlawful act of an agency, was wrongfully arrested or held for some time on remand or in a penal institution; (4) a person who was held on remand longer than the prison term to which he was sentenced. (II) A person who, without statutory grounds, was arrested under article 157 of the present Code shall be entitled to compensation if remand in custody was not ordered against him and the time he spent under arrest was not counted in the punishment imposed on him for a criminal offence or misdemeanour. (III) The right to compensation shall not be enjoyed by a person whose arrest was caused by his own reprehensible conduct. In instances referred to in clauses 1 or 2 of the first paragraph of this article, the right to compensation shall be excluded if circumstances exist as specified in clauses 2 or 3 of the first paragraph of article 538. (IV) In proceedings for compensation under the first and second paragraphs of this article, the provisions of this chapter shall apply accordingly.

364. Article 543. (I) If an example of the unjustifiable conviction or unfounded arrest of a person was shown in the media and the reputation of that person was thereby harmed, the court shall, at the request of that person, announce in a newspaper or other media a report on the decision from which it is evident that the conviction was unjustifiable or the arrest unfounded. If the case was not announced in the media, the court shall, at the request of that person, send a report to this effect to his employer. After the death of a convicted person, such right shall be held by his spouse, or the person with whom he lived in domestic partnership, and by his children, parents, brothers and sisters. (II) The request from the preceding paragraph shall be permissible even if the recovery of damages was not sought thereby. (III) Notwithstanding the conditions prescribed by article 538 of the present Code, the request from the first paragraph of this article shall also be permissible where, in connection with extraordinary judicial review, the legal qualification of the act was changed, if due to the legal qualification in the previous

judgement the reputation of the convicted person was seriously harmed. (IV) The request referred to in the first, second and third paragraphs of this article shall be submitted within six months (first paragraph, article 539) to the court which adjudicated in the criminal proceedings in the first instance. The request shall be determined by the panel (sixth paragraph, article 25). In the process of determining the request, the second and third paragraphs of article 538 and the third paragraph of article 542 of the present Code shall apply accordingly.

365. Article 544. The court which adjudicated in the criminal proceedings in the first instance shall, ex officio, render a ruling annulling the entry of the unjustifiable conviction in the criminal records. The ruling shall be sent to the Ministry of Justice. Data from the annulled entry must not be communicated to any person.

366. Article 545. Persons who were authorized to inspect and copy the files (article 128) relating to the unjustifiable conviction or unfounded arrest of a person may not use data from these files in a manner which would prejudice the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall be bound to warn such a person thereof, and a note to that effect shall be written in the file against the signature of that person.

367. Article 546. (I) A person who, by virtue of unjustifiable conviction or unfounded arrest, has lost his employment or the rights under the welfare and social security system shall be entitled to have the time of employment or insurance thus lost counted as if he were employed during the time lost through unjustifiable conviction or unfounded arrest. The time of unemployment resulting from an unjust conviction or unfounded arrest shall also be counted in his years of service, unless the person is himself responsible for that unemployment. (II) In any disposition regarding the rights arising from the length of service or of social insurance, the relevant agency shall take into account the length of time recognized pursuant to the preceding paragraph. (III) Should the agency from the preceding paragraph disregard the length of time recognized under the first paragraph of this article, the injured person may request that the court from the first paragraph of article 540 confirm that he has this period recognized by law. The claim shall be filed against the agency which refuses to recognize the recognized period, and against the Republic of Slovenia. (IV) At the request of the agency at which the right from the second paragraph of this article is exercised, the contribution prescribed for the period recognized under the first paragraph of this article shall be paid out of the budget of the Republic of Slovenia. (V) The length of social insurance recognized under the first paragraph of this article shall be included in its entirety in the length of service required for retirement.

368. A special chapter of the Misdemeanours Act entitled "Recovery of Damages, Rehabilitation and Other Rights of Persons Wrongfully Convicted, Wrongfully Sentenced to a Security or Educational Measure, or Wrongfully Arrested" (chapter 17, articles 245 to 251) sets out the right to compensation for damages suffered by wrongfully convicted or detained persons. Among others, the chapter states: "Anyone sentenced to imprisonment within misdemeanours proceedings, or anyone whose monetary fine was changed into a prison sentence (...), or anyone who was sentenced to a security or educational measure, shall have the right to recovery of the damage suffered as the result of the unjustified punishment or pronounced measure if the legally-binding misdemeanours decision was modified or annulled and proceedings against them were legally suspended (...)"(article 24/I). Under article 248, a person is also entitled to the

right to the recovery of damages "if he was detained but no misdemeanours proceedings were initiated against him, or if these proceedings were legally suspended; (...) if he was in any way wrongfully arrested as the result of an error or unlawful action by misdemeanours proceedings bodies". If the case to which the unjustified punishment or unfounded arrest of a specific person (a sentence or a security measure) refers "is revealed in a public medium and this results in the defamation of this person, the body responsible for misdemeanours proceedings shall, at this person's request, publish in a newspaper or other public media a notice from which it is clear that the previous ruling or measure was rendered without just cause" (article 249/I). Such a request is also permitted to be made even if recovery of damages was not demanded.[65]

369. Article 246 sets out in greater detail the procedure for the recovery of damages suffered as the result of wrongful treatment within misdemeanours proceedings. A special out-of-court settlement is envisaged where, if the latter fails, regular court proceedings may be pursued. Under paragraph III of this article, "a lawsuit for recovery of damages (...) shall be lodged against the Republic of Slovenia".

370. Article 50/V of the Internal Affairs Act reads: "If a person is wrongfully detained he shall have the right to seek recovery of damages. He may demand recovery of damages from the social-political community which incorporates the body whose authorized official detained him."

371. It is interesting to stress here that the Slovene Association of Physiotherapists, as a national professional organization of physiotherapists, devoted its most recent meeting (the 20th national meeting on 21 March 1998) to the issue of the rehabilitation of tortured patients. At the meeting, the president of the association, Ms Gabrijela Vrabič, and two officials of the association, Ms Sonja Hlebš and Ms Gabrijela Gaber, confirmed that in the last five-year period Slovene physiotherapists have not had any cases of torture within the meaning of the Convention against Torture. This subject was selected for the meeting in the light of the interesting visit by the delegation of the association operating within the specialized Centre for Human Rights and the Rehabilitation of Persons Subjected to Torture, based in Denmark.

372. At the same meeting, one of the officials, Prof. Martin Janko, as a representative of the Institute of Neurophysiology at Ljubljana University Hospital (a specialist professional medical institution of the highest level in the country which deals with the problem of pain), also confirmed that in the last five-year period this Institute has not encountered patients or cases in Slovenia which would involve any suspicion of violations of the Convention against Torture, nor has it dealt with any patients who suffer from any kind of pain resulting from such violations.

373. Although the ZKP stipulates that a special national foundation for victims of criminal offences be set up (article 162/I (2)), this foundation has not yet been established.

Article 15

374. Under the provision of article 18/II of the ZKP, criminal proceedings in Slovenia regularly enforce the so-called exclusion rule regarding extorted and similarly inadmissibly-obtained statements or other evidence: "The court may not base its decision on evidence obtained in the violation of human rights and basic freedoms provided by the

Constitution, nor on evidence obtained in violation of the provisions of criminal procedure and which, under the present Code, may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence."

375. This provision introduces a multi-level exclusion rule. It first (1) generally covers all evidence obtained unconstitutionally, and separately (2), evidence obtained in violation of specific particularly important provisions of the ZKP.

376. Under the ZKP, violations of the following procedural rules leads explicitly to the exclusion of evidence: under the provision of article 371/VIII of the ZKP, reliance in the judgement on direct or indirect evidence obtained by a violation of article 18 of the ZKP (exclusion rule), an absolutely major violation of criminal proceedings which the court of appeal is responsible for examining ex officio in procedures of appeal and, if it establishes the existence of this violation, to annul the ruling in the first instance (article 383 of the ZKP).

377. Under article 204 of the ZKP, if the investigating judge fails to inform an arrested person as stipulated by article 4 of the present Code (any person deprived of liberty shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his loss of liberty; a person deprived of liberty shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a lawyer of his own choice and that the competent body is bound to inform, upon his request, his immediate family of his being deprived of liberty; the suspect shall have the right to the services of a lawyer from the moment of apprehension), or the information is not entered in the record, the court shall not be allowed to base its decision on the testimony of the arrested person.

378. Under article 219 of the ZKP, if an investigation has been carried out without a written court order (and therefore in contravention of article 215/I of the ZKP), or without the presence of persons whose presence is obligatory in the investigation (and therefore in contravention of article 216/I and 216/III of the ZKP), or if the investigation has been carried out in contravention of the provisions of the first, third and fourth paragraphs of article 218 of the ZKP,[66] the court shall not be allowed to base its decision on the evidence obtained in this manner.

379. The above provisions are procedurally elaborated in the Rules on the Exclusion of Evidence from the Record, defined in article 83/I and II of the ZKP,[67] as well as in articles IV, 286/III and 377/V of the ZKP.

380. A special exclusion rule is also included in the procedural section of the Misdemeanours Act. The provision of article 114/IV reads: "The use of force or the threat of force against the accused, or any other similar means that might influence the willingness of the accused to testify or in order to obtain a confession or a statement from him, shall not be permitted; a misdemeanour ruling based on such testimony by the accused shall not be permitted."

Notes

[1] Constitution of the Republic of Slovenia in the Annex.

[2] See the Annex - Publications of the Institute of Macroeconomic Analysis and Development.

[3] See the Annex - National Minorities in Slovenia, p. 8. Table of the Statistical Yearbook of the RS for the year 1991.

[4] See the Annex - Material for the National Report of the RS on the implementation of the CE Framework Convention for the Protection of National Minorities.

[5] See Constitution of the RS - Basic Constitutional Charter on the Independence and Sovereignty of the RS.

[6] See the appendix for a list of respective international treaties to which the Republic of Slovenia is bound.

[7] According to the Constitutional Court Act (Ur. l. RS No. 15/94), the Constitutional Court of the RS is responsible not only for judgement on the compliance of acts with the Constitution of the RS (first item of article 21/I) but also for judgement on the compliance of acts and other regulations with ratified international treaties and with the general principles of international law (second item of article 21/I).

[8] See Pogačnik.

[9] "No one may be punished for an act which the law does not define as punishable and for which the law does not prescribe a penalty before this act has been committed."

[10] See Deisinger.

[11] In accordance with the valid Slovene legal system (article 5 of the Defence Act – Ur. l. RS Nos. 82/94, 44/97, 87/97): persons who perform military service professionally, conscripts, and persons who are members of compulsory military reserves when performing military service.

[12] Under article 127/II of the KZRS, the perpetrator is liable if he "takes the life of another human being (...) in a cruel (...) way", or "in order to commit or conceal another criminal offence (...) or from other base motives".

Under article 180/I of the KZRS, the perpetrator is liable if "he compels a person of the same or the opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb", where the offence was committed in a "cruel or extremely humiliating manner".

Under article 181 of the KZRS, the perpetrator is liable if "he uses force or threatens a person of the same or the opposite sex with an imminent attack on life or limb, thereby compelling that person to submit to any lewd act not covered by the preceding article, where this offence was committed in a "cruel or extremely humiliating manner".

[13] See Bavcon in: Bavcon, Šelih. See Deisinger.

[14] See the RS Supreme Court's quoted judgement in: Praktikum 1995, pp. 110-111.

[15] The provision of Article 8 of the KZRS ("Method of Committing a Criminal Offence") reads:

> "(I) A criminal offence may be committed by voluntary act or by omission. (II) A criminal offence may be committed by omission when the perpetrator has failed to perform the act which he was obliged to perform. (III) A criminal offence may be committed by omission, though the offence does not constitute criminal omission under the terms of the statute, when the perpetrator has not prevented the occurrence of an unlawful consequence. In such cases, the perpetrator shall be punished for omission only if he was obliged to prevent the occurrence of the unlawful consequence and insofar as the occurrence of such a consequence could not have been prevented even had he performed any positive act".

[16] Here we would like to draw attention to the fact that a minor portion of Slovene legal theory opposes the construct of rape and sexual violence in the form of unreal omission (and even active complicity as part of these criminal offences).

[17] (I) If grounds exist for suspecting that a criminal offence liable to public prosecution has been committed, internal affairs agencies shall be bound to take the necessary steps to discover the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, to detect and preserve traces of crime or objects of value as evidence, and to collect all information that may be useful for the successful conduct of criminal proceedings.

(II) With a view to executing the tasks from the preceding paragraph, the internal affairs agencies may: seek information from citizens; inspect transportation vehicles, passengers and luggage; restrict movement within a specific area for a specific period of time; perform what is necessary to identify persons and objects; send out a wanted circular for persons and objects; inspect, in the presence of the responsible person, specific facilities, premises and documentation of enterprises and other legal entities, and undertake other necessary measures. The facts and circumstances established in individual offences which may be of concern for criminal proceedings, as well as objects found and seized, shall be indicated in the record, or an official note shall be made thereon.

(III) Internal affairs agencies may summon citizens and, in summoning them, shall be bound to indicate the reason for this. They may forcibly bring a citizen who has failed to appear after being summoned only if the citizen has been alerted to that possibility in the

summons. In performing actions under the provisions of this article, internal affairs agencies may not examine citizens as defendants, witnesses or experts.

(IV) A person against whom an action or measure from the second and third paragraphs of this article has been undertaken shall be entitled to lodge a complaint with the competent State prosecutor within three days.

(V) Internal affairs agencies may, upon filing a written motion and subject to permission from the investigating judge or the presiding judge, also collect information from detainees if that is necessary for detecting other criminal offences and accomplices of a same person, or criminal offences committed by other perpetrators. This information shall be collected during the period and in the presence of the person designated by the investigating or presiding judge.

(VI) On the basis of information collected, the internal affairs agency shall draw up a crime report in which it shall set out evidence discovered in the process of gathering information. The crime report shall not include the contents of information disclosed by individual persons in the information-gathering process. The agency shall enclose with the report the items, sketches, photographs, reports received, records of the measures and actions undertaken, and official annotations, statements and other material which may be useful for the successful conduct of proceedings. If after submitting the crime report the internal affairs agency learns of new facts, evidence or traces of the criminal offence, they shall collect the necessary data and send it to the state prosecutor as a supplementary crime report.

(VII) The internal affairs agency shall send the State prosecutor a report even if the information gathered provides no basis for a crime report.

Article 149

(1) Authorized officers of interior affairs agencies shall be entitled to send the persons found at the scene of the crime or persons having residence abroad to the examining magistrate, or to detain them until he arrives, if such persons may supply information important for the criminal procedure and if it appears likely that an examination of these persons at a later date would be impossible or would significantly protract the procedure or cause other difficulties. These persons may not be held at the scene of the crime for more than six hours.

(2) Interior affairs agencies shall be entitled to take a photograph of the person suspected of a criminal offence as well as his fingerprints. They may also publish his photograph if that is necessary for establishing his identity and important for the successful conduct of criminal proceedings.

(3) Where it is necessary to ascertain the identity of fingerprints on individual objects, internal affairs agencies shall be entitled to take fingerprints of persons likely to have come into contact with such objects.

[18] With respect to criminal offences against military duty (chapter 27 of the KZRS) and generally officially-prosecutable criminal offences committed in military facilities, according to articles 158/I and II of the ZKP "responsible bodies within defence forces" (in practice mostly military police) also have the right to detain the suspect, but must "immediately bring him before the investigating judge or an internal affairs agency, (...) and if that is impossible, one of these agencies should immediately be informed thereof" (article 158/I of the ZKP). See also 66/I (2) and article 68 of the Defence Act, which discuss these provisions of the ZKP separately in terms of military police jurisdiction.

[19] A lawyer is obligatory in all detention cases under articles 70/II and 202/VII of the ZKP. See the special sub-chapter below entitled "Attorney" for details.

[20] If internal affairs bodies catch a conscript committing a criminal offence while in military service, they may "detain him until the military police arrive", in accordance with the provision of article 33/VI of the Defence Act. This provision must be understood in connection with the already-mentioned article 158 of the ZKP as the fundamental act governing criminal proceedings. Military police must, in this case, deliver the accused person to civil prosecution bodies (to the investigating judge or internal affairs bodies).

[21] For details on the position of young people (children and minors) in administrative, administrative-criminal and criminal proceedings in the Republic of Slovenia, see the Report of the Government of the Republic of Slovenia entitled "Initial Report of the Republic of Slovenia on Measures Adopted for the Realization of the Convention on the Rights of the Child" (1996), which was sent to the Geneva-based United Nations Committee for the Rights of the Child in accordance with article 44/I of the United Nations Convention on the Rights of the Child, especially chapter II G.

[22] The text of article 201 of the ZKP reads:

> "(I) Annulled with a ruling of the Constitutional Court (Ur. l. RS No. 25/96).
>
> (II) If a well-founded suspicion exists that a person has committed a criminal offence, remand in custody against that person may be ordered: (1) if he is in hiding, if his identity cannot be established or if other circumstances exist which point to the danger of his attempting to flee; (2) if there are grounds for concern that he will destroy the traces of the crime or if specific circumstances indicate that he will obstruct the investigation by influencing witnesses, accomplices or harbourers; (3) Declared in contravention with the Constitution of the RS with a decision of the Constitutional Court of the RS (Ur. l. RS No. 25/96).

[23] The text of article 432(I) of the ZKP reads: "Remand in custody may be ordered against a person suspected with good reason of having committed a criminal offence: if he is in hiding; if his identity cannot be ascertained or if other circumstances point to an obvious danger of flight; if the act involved is an offence against public order and sexual inviolability, or an offence with

elements of violence subject to two years' imprisonment, and specific circumstances indicate that the defendant might repeat that criminal offence or commit the criminal offence he threatens to commit."

[24] In this case remand may be ordered "if there is a danger that the minor will flee, destroy the traces of the criminal offence committed, or obstruct the investigation".

[25] Remand may be ordered "if a duly summoned defendant is obviously trying to evade appearance at the main hearing and none of the reasons for his detention under article 201 of the present Act exists". The aim of this remand is to ensure the defendant's presence at the main hearing.

[26] The text of article 361 of the ZKP reads: "(I) Annulled with a decision of the Constitutional Court of the RS (Ur. l. RS No. 25/96). (II) In passing a judgement by which the defendant is sentenced to a shorter prison term, the panel shall order remand in custody if some of the reasons from points 1 or 3 of the second paragraph of article 201 of the present Act exist, and shall cancel remand in custody if the grounds upon which it was ordered have ceased to exist. (III) The panel shall always cancel remand in custody and order the release of the defendant: if the defendant was acquitted or he was found guilty but his sentence was remitted; if he was only sentenced to a fine, received a judicial admonition, or his sentence was suspended; if, due to the length of remand in custody, he has already served the sentence; if the charge or the charge sheet was rejected, save where the latter was rejected on the grounds of the non-jurisdiction of the court. (IV) As regards the ordering or cancelling of remand in custody from after the announcement of the judgement until it becomes finally binding, the provisions of the second paragraph of this article shall apply. A decision thereon shall be passed by the panel of the court of first instance (sixth paragraph, article 25). (V) Before ordering or cancelling the remand in custody referred to in the second and fourth paragraphs of this article, the panel shall hear the opinion of the state prosecutor if the proceedings were instituted upon his request. (VI) If the defendant is on remand and the panel finds that the grounds on which detention was ordered still exist, or that the reasons adduced in the first and second paragraphs of this article exist, the panel shall extend remand in custody under a separate ruling. The panel shall also render a separate ruling when remand in custody is to be ordered or cancelled. An appeal against this ruling shall not stay the execution thereof. (VII) Remand in custody ordered or extended under the provisions of the preceding paragraphs may last until the judgement becomes final, but not beyond the term of punishment pronounced in the judgement of the court of first instance. (VIII) A defendant on remand who has been sentenced to imprisonment may, upon his request, be transferred to a penal institution under a ruling of the presiding judge even before the judgement has become finally binding."

[27] The text of article 443/VI of the ZKP reads: "If the punishment of imprisonment has been imposed, the judge may order that the defendant be detained or that he remain in detention provided the grounds referred to in the first paragraph of article 432 of the present Act exist. In such instances, the remand in custody may last until the judgement becomes final, but not beyond the expiry of the sentence imposed by the court of first instance."

[28] In these special proceedings the investigating judge may, for general detention reasons (under article 201 of the ZKP), order the remand of a foreign person "unless it is clear from the petition for extradition that extradition is not possible". In accordance with the provision of article 525/III of the ZKP, detention within extradition proceedings may last no longer than three months from the day the foreign person was detained, and at the request of the foreign country the panel of the responsible court may extend this time limit by no more than two months in justified cases", totalling a maximum five months. These cases are also subject to all other rules applying to the detention of a defendant in criminal proceedings in general.

[29] See also article 83/II (1) of the Courts Act, which declares remand issues to be urgent and therefore of the highest priority.

[30] Article 204 of the ZKP adds: "If the investigating judge fails to inform an arrested person as stipulated by article 4 of the present Act or if the information is not entered in the record, the court shall not be allowed to base its decision on the testimony of the arrested person." See also the report on article 15 of the Convention against Torture later in the text.

[31] This provision of the Constitution of the RS is concretized by article 205 of the ZKP, which reads:

> "(I) An accused person who is detained under the ruling of the investigating judge may be remanded in custody for a maximum of one month from the day he was arrested. After that period he may be kept in custody only under a ruling ordering the extension of remand in custody. (II) Remand in custody may be extended under a ruling of the panel by two months at the most (sixth paragraph, article 25). The ruling of the panel may be appealed against, but the appeal shall not stay execution. If proceedings are in progress for a criminal offence punishable under law by more than five years' imprisonment, the panel of judges of the Supreme Court may extend remand in custody by another three months at the most. The ruling on the extension of remand in custody shall be rendered by the court on the basis of a reasoned motion by the investigating judge or state prosecutor. (III) If a charge sheet is not filed before the expiry of the time limits under the preceding paragraph, remand in custody shall be cancelled and the accused person released."

Article 207 of the ZKP sets out the following rules regarding remand in custody:

> "(I) From the referral of the charge sheet to the conclusion of the main hearing, the ordering or cancellation of remand in custody shall only be possible under a ruling of the panel, which shall first hear the opinion of the state prosecutor if proceedings have been instituted at his request. The detainee may appeal against the ruling on remand in custody within 24 hours of it being served on him. The appeal shall be decided by a higher court within 48 hours. (II) When two months have passed from the last ruling on remand in custody, the panel shall be bound to examine, even in the absence of a motion by the parties, if the reasons for remand in custody still exist, and to render a ruling by which remand in custody is extended or abrogated. (III) An appeal from the rulings referred to in the first and second paragraphs of this article shall not stay execution.

(IV) No appeal shall be permitted against the ruling by which the panel rejects the motion for the ordering or cancellation of remand in custody. (V) After the charge sheet has been filed, remand in custody may last a maximum of two years. If a sentence is not passed on the accused person within this period, remand in custody shall be cancelled and the accused person released."

[32] The text of article 307/II of the ZKP reads:

"If a duly summoned defendant is obviously trying to evade appearance at the main hearing and none of the reasons for his detention under article 201 of the present Act exist, the panel may decree that he be put in detention in order to ensure his presence at the main hearing. A complaint against this ruling shall not stay its execution. The detention decreed for this reason shall be subject to the application of the provisions of articles 200 to 213 of the present Act. Unless cancelled earlier, detention shall last until the announcement of the judgement but for no longer than one month."

[33] The entire text of the articles of the ZKP which govern the rights of the accused to defence counsel read as follows:

"Article 67

(I) The accused person may have legal counsel at any stage of the proceedings.

(II) Prior to the first interrogation, the accused person shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation.

(III) Defence counsel may also be retained by the spouse of the accused person or the person with whom the accused lives in domestic partnership, by his relatives by blood in direct line, his adoptive parents, adopted children, brothers, sisters and foster parents.

(IV) Only lawyers may be engaged as defence counsel, but they may delegate articled clerks to deputize for them. Before the Supreme Court only a lawyer may act as counsel for the defence.

(V) Defence counsel shall be bound to submit the power of attorney to the body which conducts the proceedings. The accused may give the power of attorney to his lawyer verbally, to be recorded in the minutes at the body conducting the procedure.

Article 68

(I) Defence counsel may not defend two or more defendants in the same criminal matter.

(II) The accused person may retain several defence counsels, but it shall be considered that defence is secured if only one defence counsel takes part in the proceedings.

Article 69

(I) The injured party, the spouse of the injured party or of the prosecutor, the person with whom the injured party or the prosecutor lives in domestic partnership, and persons to whom the injured party or prosecutor are related by blood, in direct line to any remove or collaterally up to four removes or by marriage up to two removes, may not be counsel for the defence.

(II) A person summoned as a witness may not be counsel for the defence, except where, under the present Act, he is exempt from the obligation to testify and declares that he will not testify (...).

(III) A person who was the judge or the state prosecutor in the same matter may not act as defence counsel.

Article 70

(I) If the accused person is deaf, dumb or otherwise incapable of defending himself successfully, or if criminal proceedings are conducted against the accused for a criminal offence punishable by 20 years' imprisonment, the accused person shall have defence counsel from the very first interrogation.

(II) The accused person shall be bound to have defence counsel from the moment pre-trial detention has been ordered for him until the end of detention.

(III) The accused person shall be bound to have defence counsel at the time the charge sheet or private charges are served on him, if the criminal offence he is charged with falls within the jurisdiction of the circuit court.

(IV) If in the cases of mandatory defence referred to in the preceding paragraphs the accused person fails to retain defence counsel by himself, the president of the court shall appoint defence counsel ex officio for the further course of criminal proceedings until the finality of the judgement. If the accused person has been sentenced to 20 years' imprisonment, he shall have defence counsel appointed for him for the extraordinary judicial review as well. If defence counsel is appointed ex officio after the charge sheet has been filed, the accused person shall be informed thereof at the time the charge sheet is served on him. If, where defence is mandatory, the accused person remains without defence counsel and fails to retain one by himself, the president of the court before which the proceedings are conducted shall appoint defence counsel ex officio.

(V) Only a lawyer may be appointed as defence counsel.

[Article 71]

Article 72

(I) The accused person may choose defence counsel by himself in lieu of the one appointed for him. In that case, the appointed defence counsel shall be withdrawn.

(II) The appointed defence counsel may move to be withdrawn from the case only with good cause.

(III) The withdrawal of defence counsel in cases referred to in the first and second paragraphs of this article shall be decided by the examining magistrate or presiding judge in the procedure before the main hearing, by the panel of judges in the main hearing, and by the presiding judge of the court of first instance or the panel of judges competent to decide in the appeal procedure. No appeal shall be permitted against this decision.

(IV) The president of the court may, upon petition by or with the consent of the accused person, withdraw appointed defence counsel if the latter does not discharge his duties properly, and appoint a new one in his stead. The withdrawal of defence counsel shall be reported to the Bar.

Article 73

After a motion for criminal prosecution has been filed by the authorized prosecutor, or individual acts of investigation have been performed by the investigating judge prior to his ordering the investigation, defence counsel shall be entitled to view and copy papers, and to inspect the collected items of evidence.

[Article 74]

Article 75

(I) Defence counsel shall be entitled to do anything the accused person is entitled to do, to the advantage of his client.

(II) The rights and duties of defence counsel shall cease if the accused withdraws the power of attorney."

[34] A new act is in the final stage of completion of its legislative procedure - the Police Act. This will supersede the old Internal Affairs Act. It will be closely related to a number of important new pieces of secondary legislation in the area of police operation in Slovenia, which will enter into force on same day as the new act.

[35] According to valid Slovene law, other disciplinary sanctions for convicts upon which a prison sentence has been imposed include: reprimand; conditional or unconditional ban of receipt of mail for up to three months; conditional or unconditional committal to a confinement cell for up

to 21 days with the right to work; conditional or unconditional committal to a confinement cell for up to 21 days without the right to work. The parole period for the conditional forms of the said disciplinary measures may last up to six months. See article 77 of the ZIKS.

[36] See also article 70 of the Regulations on the Enforcement of Prison Sentences.

[37] Other disciplinary sanctions include: admonition, and a ban on leaving the centre for up to one month. See article 109/I of the ZIKS.

[38] See details on restrictions to expulsion in Slovene positive law and legal practice in the light of article 3 of the Convention against Torture in the report on article 3 of the Convention Against Torture in the section below.

[39] Article 71/I of the Non-Contentious Proceedings Act contains, in effect, the same provision.

[40] Additionally, under article 83/II (4) of the Courts Act, non-contentious cases involving the detention of persons in psychiatric health organizations are deemed to be urgent and are therefore granted priority.

[41] See below for details on the Slovene legal system and legal practice regarding action by order.

[42] At the time of writing, the 1997 annual report of the Office of the Human Rights Ombudsman of the Republic of Slovenia for the Slovene National Assembly is still being printed. The data for 1997 is taken from the public announcements of the Office of the Human Rights Ombudsman of the Republic of Slovenia made in 1997 and 1998, and from other similar material.

[43] See also the appendix to this report for the annual report of the Human Rights Ombudsman of the RS – abridged version (official English translation) for 1996. The official abridged version of the Report of the Human Rights Ombudsman of the RS for 1997 is, as yet, unavailable.

[44] In its report of 5 May 1998, the MP RS (as a response to the Human Rights Ombudsman's criticisms) gave its assurances that "the Restriction of the Use of Tobacco Products Act (and along with it protection of non-smokers against passive smoking) is chiefly implemented in institutions and in the correctional centre". According to the assurances from the MP RS, "imprisoned persons who are smokers are, as a rule, separated from non-smokers in residential premises and in bedrooms (...)". (Source: MP RS).

[45] According to official data from the RS Ministry of Justice (Administration for the Enforcement of Criminal Sanctions), there were 79 instances of self-inflicted injury among imprisoned persons in 1997 (37 detainees, 66 convicts and one person who was serving a prison sentence on the basis of misdemeanour proceedings). The injuries included mostly cuts, followed by drug poisoning and hangings. The total number included 24 self-inflicted injuries by minors, of which 23 were cuts and one a hanging (Source: MP RS).

[46] Special attention needs to be given to the total of 56 registered hunger strikes (26 among detainees and 30 among convicts serving prison sentences) (Source: MP RS).

[47] In 1997 two persons deprived of their liberty in Slovenia committed suicide, of whom one was a detainee (Source: MP RS).

[48] The list of organizations is based on the official, though for technical reasons incomplete, source of the Ministry of Foreign Affairs (Sector for Political Multilateral Relations) from May 1998. The order of the non-governmental organizations referred to is random.

[49] See also point 6 (indents 10 and 11) and point 28 of the Rules of Service in the Slovene Armed Forces, which deal with the prohibition of violations of international military and humanitarian law, the Constitution and laws of the RS and, in particular, of "human rights and basic freedoms recognized by United Nations acts".

[50] The texts of these incriminations covered by the KZRS read as follows:

"Failure to Inform Authorities of Preparations for Crime" (article 285)

(I) Whoever, knowing of preparations to be undertaken for the commission of a criminal offence for which the punishment of more than three years' imprisonment is prescribed by the statute, fails to inform the competent authorities thereof early enough for the commission of the offence in question to be prevented, and if the perpetration of such an offence is subsequently attempted or accomplished, shall be sentenced to imprisonment for not more than one year.

(II) If the offence under the preceding paragraph has been committed with respect to a criminal offence for which the imposition of the sentence of 20 years' imprisonment is prescribed by the statute, the perpetrator shall be sentenced to imprisonment for not more than three years.

(III) No punishment shall be imposed on whoever fails to inform the competent authorities of preparations to commit a criminal offence under the first paragraph of the present article, provided he is the spouse, extramarital partner, lineal relative, brother, sister, adoptive parent or adopted child of the perpetrator. If any of persons above is not to be punished for failure to submit a report of the preparations of crime under the first paragraph of the present article, neither shall his spouse or extramarital partner be punished for such an offence.

"Failure to Provide Information of Crime or Perpetrator" (article 286)

(I) Whoever knows of a perpetrator of a criminal offence for which the sentence of 20 years' imprisonment is prescribed by the statute, or whoever knows of the commission of such a criminal offence and fails to inform the competent authorities thereof, whereby such information is decisive to the discovery of the perpetrator of the crime, shall be sentenced to imprisonment for not more than three years.

(II) An official who knowingly fails to submit a report of a criminal offence of which he comes to know during the performance of his official duties and for which the

punishment of more than three years' imprisonment is prescribed under the statute, the perpetrator whereof is prosecuted ex officio, shall be sentenced to imprisonment for not more than three years.

(III) No punishment shall be imposed on whoever fails to submit information about a crime, provided they are either the spouse, extramarital partner, lineal relative, brother, sister, adoptive parent, adopted child, defence counsel, doctor or confessor of the perpetrator. If any of these persons, except the defence counsel, doctor or confessor, is not to be punished for failure to submit information about the crime under the first paragraph of the present article, neither shall his spouse or extramarital partner be punished for committing such an offence.

[51] See Bavcon in: Bavcon, Šelih, 1996.

[52] Article 21 of the KZRS reads: "(I) The perpetrator of a criminal offence shall not be held liable under criminal law if, for reasons which can be justified, he did not know that such an offence was unlawful. (II) The court may reduce the sentence of a perpetrator who could have avoided his mistake".

[53] The provision of article 23 of the Foreign Persons Act reads: "The residence of foreign persons who reside in the Republic of Slovenia on the basis of a foreign passport, issued visa or permit for entry, or in accordance with an international treaty (...), or who were issued a permit for temporary residence (...), may be cancelled: if this is necessary for public order, security or national defence reasons; if the foreign person refuses to comply with decisions issued by national bodies; if the foreign person commits repeatedly severe violations of public order and peace, national border security and this Act; if the foreign person has been convicted by a foreign or Slovene court for committing a criminal offence punishable with a prison sentence of more than three months; if the foreign person remains without funds to support himself and fails to provide other means of support for himself during the time of his residence in the Republic of Slovenia; if this is necessary for protecting the health of people".

The provision of article 24 of the Foreign Persons Act reads: "The residence of foreign persons who are in possession of a permit for permanent residence may be cancelled: if the foreign person has been given a prison sentence of three years or more for committing a criminal offence; if the foreign person has been convicted and given prison sentences the total duration of which exceeds five years".

[54] A foreign person is issued with a decision on his cancellation of residence by the responsible body in whose area the foreign person resides or has registered temporary residence, or by the national administrative body responsible for internal affairs in the event that the cancellation applies to the permanent residence of a foreign person.

[55] See the general provisions of regular and extraordinary legal instruments in the ZKP and the Misdemeanours Act.

[56] See the Administrative Disputes Act (Ur. l. RS No. 50/97).

[57] The full text of the chapter of the ZKP in question reads:

"Article 521

Unless provided otherwise in an international agreement, the extradition of accused and convicted persons shall be requested and carried out pursuant to the provisions of the present Act.

Article 522

The preconditions for extradition are: (1) that the person whose extradition is requested is not a citizen of the Republic of Slovenia; (2) that the offence which prompted the request for extradition was not committed in the territory of the Republic of Slovenia, against the Republic of Slovenia or against a Slovene citizen; (3) that the offence which prompted the request for extradition is a criminal offence within the meaning of domestic and foreign law alike; (4) that, under domestic law, criminal prosecution or the execution of punishment was not statute-barred before the foreign person was detained or interrogated as an accused person; (5) that the foreign person whose extradition is requested has not been convicted of the same offence by a domestic court or has not been acquitted under a final decision of a domestic court, or criminal proceedings against him have been suspended by a final decision, or the charge against him has been rejected by a final decision, or that in the Republic of Slovenia criminal proceedings have not been instituted against the foreign person for the same offence committed against the Republic of Slovenia, and - in the event that criminal proceedings have been instituted for an offence committed against a citizen of the Republic of Slovenia - that the indemnification claim of the injured party has been secured; (6) that the identity of the person whose extradition is requested has been established; (7) that there is sufficient evidence for suspecting that the foreign person whose extradition is requested has committed a criminal offence, or that a finally-binding judgement exists thereon.

Article 523

(1) Proceedings for the extradition of an accused or convicted foreign person shall be instituted on petition of a foreign country.

(2) Petitions shall be submitted through diplomatic channels.

(3) Petitions for extradition shall enclose:

(1) means of identification of the accused or convicted person (accurate description, photographs, fingerprints, etc.); (2) certificate or other data on citizenship; (3) the charge sheet, or judgement, or ruling on detention, or another equivalent document, in the original or a certified copy thereof. These papers shall contain: the name and surname of the person whose extradition is requested and other data necessary to establish his identity; a description of the offence;

statutory classification of the offence and the evidence on which suspicion rests; (4) an extract from the foreign penal law to be applied, or which was applied, against the accused regarding the offence which prompted the request for extradition; if the offence was committed in a third country, an extract from the penal code of that country shall be enclosed.

(4) If the petition and annexes were drawn up in a foreign language, a certified copy translated into Slovene shall be enclosed.

Article 524

(1) The Ministry of Foreign Affairs shall transmit the petition for extradition of a foreign person through the Ministry of Justice to the investigating judge in whose territory the foreign person resides or in whose territory he is to be found.

(2) If the permanent or temporary residence of the foreign person whose extradition is requested is not known, his whereabouts shall first be established through an internal affairs agency.

(3) If the petition complies with the conditions specified in the preceding article and if grounds for remand in custody as specified in article 201 of the present Act exist, the investigating judge shall order that the foreign person be detained, or shall take other steps to secure his presence, unless it is clear from the petition itself that extradition is impermissible.

(4) The investigating judge shall immediately, upon establishing the identity of the foreign person, inform him why and on what grounds his extradition is requested, whereupon he shall invite the foreign person to say what he has to say in his defence.

(5) The examination and the statement of the foreign person shall be entered in the record. The investigating judge shall instruct the foreign person that he may retain a lawyer, or shall appoint one for him ex officio if a criminal offence for which defence is mandatory is involved or if remand in custody against the foreign person has been ordered.

Article 525

(1) In urgent cases, where there is a danger that the foreign person might flee or go into hiding, the internal affairs agency shall be allowed to arrest the foreign person upon petition by a foreign competent agency, irrespective of the manner in which the petition was sent. The petition should contain necessary data for the establishment of the foreign person's identity, the type and designation of the criminal offence, the number of the decision, together with the date, place and address of the foreign agency which ordered detention, and a statement to the effect that extradition shall be requested by a regular route.

(2) The internal affairs agency shall, without delay, bring the arrested foreign person before the investigating judge of the court with jurisdiction for interrogation. If the investigating judge orders remand in custody against the foreign person, the investigating judge shall inform the Ministry of Foreign Affairs thereof.

(3) The investigating judge shall release the foreign person if grounds for detention cease to exist, or if the request for extradition is not filed within the time limit determined by him in allowing for the distance of the requesting country from Slovenia. This period of time may not be in excess of three months from the day the foreign person was detained. The foreign country shall be informed of the aforesaid time limit. Upon petition by the foreign country, the panel of the court of jurisdiction may extend this period by a maximum of two months.

(4) If the petition is filed within the prescribed time limit, the investigating judge shall proceed as provided by the third and fourth paragraphs of the preceding article.

Article 526

(1) After hearing the views of the State prosecutor and defence counsel, the investigating judge shall perform, if necessary, other investigative acts in order to determine whether grounds exist for the extradition of the foreign person or the delivery of objects upon or by means of which the criminal offence was committed, provided such objects were seized from the foreign person.

(2) On completing his inquiries, the investigative judge shall send the files to the panel, together with his opinion on the matter (sixth paragraph, article 25).

(3) If criminal proceedings for the same or another criminal offence are in progress before a domestic court against the foreign person whose extradition is requested, the investigating judge shall put a note to that effect in the files.

Article 527

(1) If the panel of the circuit court finds that statutory prerequisites for extradition have not been fulfilled, it shall render a ruling rejecting the request for extradition. The court shall, ex officio, forward the ruling to the court of second instance which, after hearing the opinion of the State prosecutor, may uphold, annul or modify the ruling.

(2) If the foreign person is on remand, the panel of the court of first instance may rule that he remain in custody until the ruling by which extradition has been rejected becomes finally binding.

(3) The final ruling by which extradition is rejected shall be transmitted via the Ministry of Justice to the Ministry of Foreign Affairs, which shall notify the foreign country thereof.

Article 528

If the panel of the circuit court finds that the statutory prerequisites for extradition (article 522) have been fulfilled, it shall confirm such a finding by a ruling.

Article 529

If the court of second instance finds, upon appeal, that the statutory prerequisites for the extradition of the foreign person have been fulfilled, or no appeal against the ruling to that effect of the court of first instance has been filed, it shall refer the matter to the Minister of Justice, who shall rule on extradition.

Article 530

(1) The Minister of Justice shall render a ruling whereby extradition is either granted or rejected. He may decide that extradition be postponed because proceedings for another criminal offence are pending before a domestic court against the foreign person whose extradition is requested, or because the foreign person is serving his sentence in the Republic of Slovenia.

(2) The Minister of Justice shall refuse the extradition of a foreign person who enjoys the right of asylum in the Republic of Slovenia, or who has committed a political or military offence. He may refuse extradition if a criminal offence punishable by up to three years' imprisonment is involved, or if a foreign court had imposed a sentence for a prison term of up to one year.

Article 531

(1) In the ruling by which he grants the extradition of a foreign person, the Minister of Justice shall state: (1) that the foreign person may not be prosecuted for another criminal offence committed prior to the extradition; (2) that he may not be punished for another criminal offence committed before his extradition; (3) that a severer punishment than the one to which he was sentenced may not be imposed on him; (4) that he may not be surrendered to a third country for the prosecution of a criminal offence which he committed before his extradition was granted.

(2) In addition to the aforesaid conditions, the Minister of Justice may decree yet other preconditions for extradition.

Article 532

(1) The ruling regarding extradition shall be communicated to a foreign country through diplomatic channels.

(2) The ruling by which extradition is granted shall be forwarded to the Ministry of the Interior, which shall order that the foreign person be transported to the State border where, at a place agreed upon earlier, he shall be surrendered to the agencies of the foreign country which requested extradition.

Article 533

(1) Where several countries request the extradition of the same person for the same criminal offence, priority shall be given to the country whose citizen that person is. If his country of origin does not request extradition, priority shall be given to the country in whose territory the criminal offence was committed. If the offence was committed in the territories of several countries, or if the site of the offence is not known, priority shall be given to the country which requested extradition first.

(2) Where several countries request extradition of the same person for several criminal offences, priority shall be given to the country whose citizen that person is. If that country does not request extradition, priority shall be given to the country in whose territory the gravest criminal offence was committed. If the criminal offences are of equal gravity, priority shall be given to the country which requested extradition first.

Article 534

(1) If criminal proceedings are pending in the Republic of Slovenia against a person who resides in a foreign country, or if that person has been punished by a domestic court, the Minister of Justice may file a request for his extradition.

(2) The request shall be sent to a foreign country through diplomatic channels, together with the documents and data referred to in article 523 of the present Act.

Article 535

(1) If there is a danger that the person whose extradition is requested might flee or go into hiding, the Minister of Justice may request, before taking the action referred to in the preceding article, that the necessary measures be taken for his apprehension.

(2) In the request for provisional arrest, the requesting party shall provide data on the identity of the person sought, the name and nature of the criminal offence, the number and date of the warrant of arrest, the place and name of the agency which ordered remand in custody or information about the finality of the judgement, and a statement to the effect that extradition shall be requested through regular channels.

Article 536

(1) If the person sought is extradited, he may be prosecuted or punished only for the criminal offence for which extradition was granted.

(2) If such a person was convicted by a domestic court of other criminal offences committed before extradition, for which extradition was not granted, the provisions of article 407 of the present Act shall apply.

(3) If extradition was granted and accepted subject to specific conditions regarding the type and amount of punishment, the court shall be bound by these conditions in imposing punishment. If the enforcement of an already-imposed sentence is involved, the court which adjudicated in the final instance shall modify the judgement and bring the sentence imposed into line with the conditions of extradition.

(4) If the extradited person was in detention in a foreign country for the criminal offence for which he was extradited, the time spent in detention shall count towards the punishment.

Article 537

(1) If a foreign country requests extradition from another foreign country and the person to be extradited is to be transported through the territory of the Republic of Slovenia, the Minister of Justice may, upon petition of the country concerned, grant transportation, provided the person is not a citizen of the Republic of Slovenia and that the extradition does not take place for a political or military offence.

(2) The application for transit through the territory of the Republic of Slovenia shall contain all data specified in article 523 of the present Act.

(3) If reciprocity exists, the costs of transportation of the aforesaid person through the territory of the Republic of Slovenia shall be charged to the national budget."

[58] According to Slovene criminal law, criminal offences with respect to which agreement to commit them is in itself punishable include: murder (article 127 of the KZRS); aggravated bodily harm (article 134 of the KZRS); grievous bodily harm (article 135 of the KZRS); rape (article 180 of the KZRS); sexual violence (article 181 of the KZRS); extortion of a statement (article 271 of the KZRS); maltreatment of more than one subordinate at the same time (article 278/II of the KZRS), etc.

[59] The final article (520) of the same chapter adds:

"(I) The request of a foreign country to the Republic of Slovenia to assume prosecution of a citizen of the Republic of Slovenia, or a person with permanent residence in the Republic of Slovenia, for a criminal offence committed abroad shall be transmitted, together with the files, to the competent State prosecutor in whose territory that person has permanent residence.

(II) Indemnification claims filed with the competent agency of a foreign country shall be treated as if they have been filed with the court of jurisdiction.

(III) Information about the refusal to assume criminal prosecution and the final decision issued within criminal proceedings shall be sent to the foreign country which filed the request."

[60] Under article 47 of the same act, all authorized officials must divert and prevent criminal offences, including possible criminal offences by their co-workers, and criminal offences involving torture and other cruel, inhuman and degrading treatment or punishment.

[61] The State prosecutor shall not be obliged to start criminal prosecution, or shall be entitled to abandon prosecution:

"(1) Where the Penal Code stipulates that the court may grant remission of penalty to a criminal offender and the State prosecutor assesses that, in view of the actual circumstances of the case, a sentence alone, without a criminal sanction, is not necessary;

(2) where the Penal Code provides, for a specific offence, a fine or imprisonment up to one year and the suspect or the accused, having genuinely repented of the offence, has prevented harmful consequences or compensated for damage and the State prosecutor assesses that, in view of the actual circumstances of the case, a criminal sanction would not be justified."

[62] Of course, Roma are legally equal with other participants in criminal proceedings, including proceedings which, in one or another way, are related to torture within the meaning of the Convention.

[63] The Ministry of the Interior has in its composition the special Honorary Arbitration Council for Ethical Issues. It decides on violations of the Police Code of Ethics.

[64] See, for example, article 65/I and II and article 66 of the ZIKS, and articles 53 and 54 of the Regulations on the Enforcement of Prison Sentences.

[65] Under Article 149/III, the demand in question must be lodged with the body which conducted the misdemeanours procedure in the first instance within six months of the legal finality of the decision on suspension of proceedings.

[66] The text of articles 218/I, III and IV reads as follows: "(I) Authorized internal affairs officers may, without a decree from the court, enter and if necessary search the accommodation and other premises of a person if the occupant so desires; if someone is calling for help; if a perpetrator caught in the act of committing a criminal offence is to be apprehended; if reasons of the safety of people and property so demand; and if a person whose apprehension or compulsory arrest under a decree of the competent state agency, or a person being prosecuted, is to be found in the dwelling or other premises." "(III) A search may be carried out without witnesses being present if their presence cannot be secured immediately and if it would be unsafe to delay the act. The reasons for a search without the presence of witnesses shall be cited in the record."
"(IV) Authorized internal affairs officers may search a person without a search warrant and without witnesses present when acting under a decree on the compulsory appearance of a person

or when apprehending a person, provided grounds exist for suspecting that the person is carrying weapons for assault or that he will throw away, hide or destroy objects which must be taken away from him as evidence in criminal proceedings."

[67] The full provision of Article 83 of the ZKP reads:

> "(I) Where the present Act stipulates that a court decision may not be based on the statement of the accused, a witness or an expert, the investigating judge shall, ex officio or upon the motion of the parties, rule that records of such statements be excluded from the file the moment he establishes that the statements are of such a nature. This ruling may be challenged by a special complaint.
>
> (II) When the ruling becomes final, the excluded records shall be sealed in a separate envelope and kept apart from other files by the investigating judge. The excluded records may not be examined or used in the proceedings.
>
> (III) When the investigation has been completed or the investigating judge has approved the filing of an indictment without an investigation (first paragraph, article 179), the investigating judge shall abide by the first and second paragraphs of this article regarding the information which, under article 148 of the present Act, has been given to the interior affairs bodies by the accused and by persons who may not be examined as witnesses (article 235), who have refused to bear witness (article 236) in accordance with the present Act or who, under the present Act, may not be appointed as experts (first paragraph, article 251). If the public prosecutor brings an indictment without an investigation being conducted (paragraph 6, article 170), the public prosecutor shall send the files containing such information to the investigating judge, who shall deal with them in accordance with the provisions of this article.
>
> (IV) The provisions of the first paragraph of this article, the fourth paragraph of article 276, the third paragraph of article 286, the third paragraph of article 340 and the fifth paragraph of article 377 shall be applied accordingly to the records of house searches or searches of persons, as well as to objects, recordings, reports and other evidence obtained contrary to the provisions of articles 155 and 219 of the present Act.
>
> (V) A court decision may not be based on information which should be excluded from the file under the third paragraph of this article."

List of references

1. Bavcon L., Šelih A.: Kazensko pravo – splošni del (Criminal Law – General Section). Ljubljana, ČŽ Ur. l. RS, 1996.

2. Bavcon L. et al.: Kazenski zakonik Republike Slovenije z uvodnimi pojasnili Ljuba Bavcona (et al.) in stvarnim kazalom Vida Jakulina (The Penal Code of the Republic of Slovenia with introductory explanation by Ljubo Bavcon et al. and an index of terms by Vid Jakulin). Ljubljana: Ur. l. RS, 1994: pp. 21-100.

3. Deisinger M.: Komentar Kazenskega zakona SRS s komentarjem in sodno prakso (Commentary to the Penal Code of the Socialist Republic of Slovenia, Commentary and Legal Practice). ČGP Delo, TOZD Gospodarski vestnik Ljubljana, 1985.

4. Filipčič K., Jakulin V., Karakaš A., Korošec D.: Praktikum za materialno kazensko pravo (Practical Handbook for Substantive Criminal Law). Ljubljana: ČZ Ur. l. RS. 1995.

5. Korošec D.: Privolitev oškodovanca v kazenskem pravu (primerjava dveh kazenskopravnih sistemov) (The Injured Party's Consent in Criminal Law (comparison of two criminal-law systems). Doctoral dissertation. Ljubljana: Faculty of Law of the University of Ljubljana, 1997.

6. Pogačnik M.: Veljavnost mednarodnih pogodb v Republiki Sloveniji (Validity of International Treaties in the Republic of Slovenia). Pravnik 1996; 6-8: pp. 361-373.

7. Statistični urad Republike Slovenije: Statistični letopis 1997 (National Statistical Office: 1997 Statistical Yearbook). Ljubljana, National Statistical Office, 1997.

8. Ministrstvo za delo, družino in socialne zadeve RS: Vlada Republike Slovenije – Začetno poročilo Republike Slovenije o sprejetih ukrepih za uresničevanje Konvencije o otrokovih pravicah (RS Ministry of Labour, Family and Social Affairs: Government of the Republic of Slovenia – Initial Report of the Republic of Slovenia on Measures Adopted for the Realization of the Convention on the Rights of the Child). Ljubljana, 1997.

List of appendices

1. **Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia**

   - **The Constitution of the Republic of Slovenia**

2. **Penal Code of the Republic of Slovenia**

3. **The Code of Criminal Procedure of the Republic of Slovenia**

4. **Extract from the Statistical Yearbook of the Republic of Slovenia 1997 (Crime)**

5. **Ethnic Minorities in Slovenia, the publication of the Institute for Ethnic Studies in Ljubljana, from October 1994**

6. **The RS Human Rights Ombudsman Annual Reports for 1996, 1997 and 1998 – Abbreviated versions in English**

7. **Council of Europe's Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 February 1995.**